

# FINANCIAL SERVICES ANTIFRAUD NETWORK ACT OF 2001

OCTOBER 16, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany H.R. 1408]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1408) to safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment (stated in terms of a provision in the reported bill filed by the Committee on Financial Services) is as follows:

In section 111(e)(2), strike subparagraph (A) and insert the following:

(A) DECLARATORY JUDGMENT.—If a party seeks in any action or proceeding to compel disclosure of confidential supervisory information, a financial regulator may in a civil action for a declaratory judgment seek to prevent such disclosure.

#### PURPOSE AND SUMMARY

H.R. 1408, as reported by the Committee on the Judiciary, establishes a seamless national network for the sharing of critical and confidential antifraud information among American financial services industries. This network is intended to preserve the careful balance of privacy and confidentiality concerns with the need of our financial services industries' regulators and law enforcement agencies to access critical information.

#### BACKGROUND AND NEED FOR THE LEGISLATION

##### A. BACKGROUND

In recent weeks, threats of potential terrorist activity within the United States have raised grave concern over America's Homeland Security. The need to better secure our financial services industries is emphasized by the possibility that perpetrators of terrorist acts on September 11, 2001, may have utilized American financial markets to hedge enormous profits from their horrific acts.<sup>1</sup> Furthermore, a financial investigation is reportedly a key element of the ongoing investigation into the September 11, 2001 attacks.<sup>2</sup> Enhancing the ability of financial services industries' regulators to better evaluate those to be licensed to serve in our financial services industries will help America fortify its first line of defense and prevent abuses of our financial services industries.

Currently, there are over 250 Federal and State financial regulators and self-regulating financial organizations, each using different systems without a coordinated interface to share information and keep track of each other's antifraud efforts. Most regulators have already computerized their records and have been working on efforts to coordinate their databases internally. Recently, some of the larger regulators have begun developing individual information-sharing agreements with other regulators across the financial industry. There are, however, no comprehensive cross-industry coordination efforts underway, and there are no comprehensive guidelines for safeguards to protect the confidentiality, privacy, and security of shared information. Effectuating individual coordination among all of the more than 250 financial regulators would require

<sup>1</sup> Jerry Seper, Patrice Hill, *FBI Expands Terrorist Hunt Into U.S. Banks*, Wash. Times, Sept. 19, 2001, at A18.

<sup>2</sup> *Id.*

tens of thousands of separate agreements—something that would be neither efficient nor effective for protecting consumers.

#### B. THE COBLE AMENDMENT

At the markup, Mr. Coble, Chairman of the Committee on the Judiciary Subcommittee on Courts, the Internet, and Intellectual Property, offered an amendment to subsection 111(e)(2)(A) of H.R. 1408. In general, section 111 clarifies that “confidential supervisory information” (CSI) prepared by financial regulators is privileged from disclosure. As a result, the regulator collecting the CSI is its owner and its contents may not be disclosed by a third party absent the regulator’s consent. While H.R. 1408 provides rules for the appropriate disclosure of CSI, section 111(e)(2)(A) permits regulators to remove any dispute over the disclosure of CSI to Federal District Court.

Although Mr. Coble explained that he was not opposed to the Federal Courts reviewing disputes over CSI disclosure, Mr. Coble explained two primary objections to the drafting of section 111(e)(2)(A):

1. As drafted, section 111(e)(2)(A) would apply to a wide variety of proceedings in state court, including criminal prosecutions, civil fraud suits, and proceedings instituted by state regulators. In such proceedings, a third party might well assert that the CSI in question was relevant to a claim, even a constitutional defense.
2. The language of section 111(e)(2)(A) would encourage unnecessary satellite litigation over what part of a given case would be brought into Federal court and what part would remain in a state tribunal.

The Coble amendment substitutes new language in subparagraph 111(e)(2)(A), authorizing an action for declaratory judgement. The action for declaratory judgement creates a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy, or in which the party entitled to such a remedy fails to pursue. The classic example is a Federal declaratory judgement action to resolve coverage issues in an automobile accident while the state court resolves questions of liability.

Under the Coble amendment, a regulator in a state action may request that a Federal District Court issue a declaratory judgement as to whether the regulator must surrender its CSI to a third party. It is simply a cleaner way to accomplish the same purpose of section 111(e)(2).

#### C. THE REPRESENTATIVE SMITH AND REPRESENTATIVE BACHUS AGREEMENT

During the markup, Mr. Smith, Chairman of the Committee on the Judiciary Subcommittee on Crime, voiced opposition to H.R. 1408. Mr. Smith noted that while H.R. 1408 would enhance information sharing between financial regulators, other provisions in H.R. 1408 would limit the ability of law enforcement to receive and share the same information. In addition, Mr. Smith pointed out that section 111(b) of H.R. 1408 created an exception for duly au-

thorized Committees of the Congress, the Government Accounting Office, and financial regulators to access privileged information under section 111(b) but provided no exception for law enforcement. During markup, Mr. Smith pointed out that information currently accessible to law enforcement would become privileged and unaccessible under H.R. 1408. Mr. Smith explained that his concerns are shared by the United States Department of Justice.

Mr. Smith engaged Mr. Bachus in a colloquy to discuss the possibility of drafting an amendment for the floor that would address Mr. Smith's concerns. Mr. Bachus agreed to work with Mr. Smith, Members on both sides of the aisle, so that an amendment may be offered on the House floor.

#### HEARINGS

No hearings were held on H.R. 1408.

#### COMMITTEE CONSIDERATION

On Wednesday, October 10, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 1408, with amendment, by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

During the Committee's consideration of H.R. 1408, it took no rollcall votes. The Coble amendment passed by a voice vote and the Chairman Sensenbrenner motion to order the bill reported favorably with an amendment passed by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 1408 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1408, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 12, 2001.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1408, the Financial Services Antifraud Network Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Ken Johnson (for Federal costs), who can be reached at 226-2860, Susan Sieg Tompkins (for the State and local impact), who can be reached at 225-3220, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226-2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 1408—Financial Services Antifraud Network Act of 2001.*

#### SUMMARY

CBO estimates that enacting H.R. 1408 would have no significant impact on the budget. Enacting the legislation could affect direct spending and receipts, so pay-as-go procedures would apply; however, we estimate that any such impacts would not be significant. H.R. 1408 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would not be significant and would not exceed the thresholds established in that act (\$56 million for intergovernmental mandates and \$113 million for private-sector mandates in 2001, adjusted annually for inflation).

H.R. 1408 would require financial regulators to coordinate their computer systems to share information about fraud. The affected regulators would include private regulatory organizations, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Securities and Exchange Commission (SEC), and State regulators of the banking, insurance, and securities industries.

The bill also would establish criminal penalties for regulators who intentionally disclose confidential or privileged information to the public. Finally, the bill would authorize these regulators to request the Federal Bureau of Investigation (FBI) to conduct criminal background checks on individuals in the financial services industry, and it would impose criminal penalties for the improper use of such information.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that coordinating computer systems among the affected regulatory organizations would cost about \$2 million over

the 2002–2003 period and insignificant amounts in subsequent years. We estimate, however, that these costs would be largely offset by fees, and that the net effect on the budget would be negligible.

Those prosecuted and convicted under H.R. 1408 could be subject to criminal fines; therefore, the Federal Government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO estimates that any impact of this legislation on collections of fines (and subsequent spending) would not be significant.

#### BASIS OF ESTIMATE

Federal financial regulators currently provide information about enforcement and disciplinary actions via the Internet. Under the bill, CBO expects that the financial regulators would create a search engine to share information about fraud, and that the FDIC, the NCUA, the OCC, or the OTS would bear the costs of this new system. The NCUA, the OCC, and the OTS charge fees to cover all their administrative costs; therefore, additional spending by those agencies would have no significant net budgetary effect. That is not the case with the FDIC, however. Because the balances in the deposit insurance funds exceed the levels required under current law, deposit insurance premiums would not be affected by a small amount of additional spending. Therefore, CBO expects that costs incurred by the FDIC would not be recovered by raising insurance premiums.

The Federal Reserve remits its profits to the Treasury, and those payments are classified as governmental receipts in the Federal budget. To the extent that the Federal Reserve bears the costs of sharing information, H.R. 1408 would reduce receipts, but CBO estimates that any such impact would be negligible. If Federal financial regulators that receive annual appropriations, such as the SEC, bear the costs of sharing information, H.R. 1408 could increase discretionary spending, subject to the availability of appropriated funds.

#### PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Under the Balanced Budget and Emergency Deficit Control Act, legislation to provide funding necessary to meet the government's deposit insurance commitment is excluded from pay-as-you-go procedures. CBO expects that the cost to the FDIC and other financial regulators to establish a system to share information on fraud would be related to the safety and soundness of the banking system, and thus would be excluded. Although H.R. 1408 would establish new criminal penalties, CBO estimates that any impact of this legislation on the collection of criminal fines and subsequent spending would not be significant.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill would require State and private financial regulators to:

- Participate in a network that links databases containing information on final enforcement and disciplinary actions they take. The bill does not require regulators to create new databases; rather, if such databases of public information exist, those regulators must make the contents available to the network.
- Provide notice to persons against whom enforcement or disciplinary action is taken based on information from the network. Such notice would include the identity of the network participant who provided the information, a description of the information received, and an opportunity to respond to the information.

The requirement to make information available to the network and to meet certain notice requirements would constitute both private-sector and intergovernmental mandates.

The bill also would preempt certain State disclosure laws that would apply to the regulatory information released to the network, to the extent that State laws provide less confidentiality or a weaker privilege than the bill provides. The bill also would require State insurance regulators, when being audited by the General Accounting Office (GAO), to make all records available to GAO as part of the audit. The preemption and new requirement would be intergovernmental mandates.

Based on information from governmental and industry sources, CBO estimates that the costs of these mandates would not be significant, and would not exceed the thresholds established in UMRA. Because the regulators would be required to provide information from databases that already exist, the costs to regulators would be incurred only to bring those databases into compliance with the network design. The notice requirements would expand the procedures States already follow in their regulatory process and would impose minimal costs.

The bill would place certain eligibility requirements on State insurance commissioners and State securities administrators in order to access information from the network. These eligibility provisions affect voluntary access to network information and therefore are not mandates.

#### PREVIOUS CBO ESTIMATE

On July 17, 2001, CBO transmitted a cost estimate for H.R. 1408, as ordered reported by the House Committee on Financial Services on June 27, 2001. The two versions of the bill are nearly identical, and their budgetary effects are the same.

#### ESTIMATE PREPARED BY:

Federal Costs: Mark Hadley and Ken Johnson (226–2860)  
 Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins (225–3220)  
 Impact on the Private Sector: Paige Piper/Bach (226–2940)

#### ESTIMATE APPROVED BY:

Robert A. Sunshine  
 Assistant Director for Budget Analysis

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority for this legislation in article 1, section 8, clause 1 (relating to the general welfare of the United States); article 1, section 8, clause 3 (relating to the power to regulate interstate commerce); article 1, section 8, clause 5 (relating to the power to coin money and regulate the value thereof); and article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section by section analysis describes H.R. 1408 as reported by the Committee on the Judiciary.

## TITLE I—ANTIFRAUD NETWORK

## SUBTITLE A—DIRECTION TO FINANCIAL REGULATORS

*Section 100. Creation and Operation of the Network.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

SUBTITLE B—POTENTIAL ESTABLISHMENT OF ANTIFRAUD  
SUBCOMMITTEE

*Section 101. Establishment.* This section authorizes the establishment of an “Antifraud Subcommittee” (the Subcommittee) within the President’s Working Group on Financial Markets, which operates pursuant to Executive Order 12631. In addition, this section establishes liaisons between the Subcommittee, representatives from the financial services industries, and representatives from law enforcement agencies. Liaison representatives from law enforcement agencies include: a representative of the Department of Justice, appointed by the Attorney General; a representative of the Federal Bureau of Investigation (FBI), appointed by the Director of the FBI; a representative of the United States Secret Service, appointed by the Director of the Secret Service; and a representative of the Financial Crimes Enforcement Network, appointed by the Secretary of Treasury.

*Section 102. Purposes of the Subcommittee.* This section authorizes the Subcommittee to coordinate various local, State, and Federal antifraud databases through a network, providing information to financial services industries’ regulators. Subparagraph, 102(a)(3) states that “where appropriate” law enforcement agencies are authorized to participate in this network. The committee intends that “where appropriate” does not limit law enforcement agencies ability to participate in the network and that it provides discretion to law enforcement agencies to determine which databases are appropriate to coordinate on this network. For instance, a law enforcement agency would have the discretion to determine whether law enforcement sensitive or confidential database are appropriate to be coordinated on this network. Therefore, the Subcommittee does not have authority to compel a law enforcement agency or its liaison to provide access or to share any confidential or law enforcement sensitive information. In addition, this section provides re-



quirements for participation on the antifraud network, due process considerations, privacy protections, and performance reporting requirements. Finally, this section does not affect existing information sharing agreements already in place and does not provide authority for the Subcommittee to mandate the creation of new databases or require costly modifications to existing databases.

*Section 103. Chairperson; term of Chairperson; Meetings; Officers and Staff.* Provisions contained in Section 103 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 104. Nonagency Status.* The provision contained in Section 104 was not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 105. Powers of the Subcommittee.* This section authorizes the Subcommittee to collect information through its liaisons describing existing antifraud databases, limits additional compensation for members and liaisons to the Subcommittee, and authorizes the Subcommittee to request additional administrative, technical, or other support service to carry out the purposes of section 102(a).

With respect to collecting information describing existing antifraud databases, this authority is limited in section 105(b) “to the extent permitted by law.” Therefore, the Subcommittee is authorized only to collect antifraud information already available under existing law. While this provision requires liaisons to furnish information about existing databases, any such database deemed “law enforcement sensitive” or confidential by a law enforcement agency or its liaison would be excluded from this requirement. Furthermore, nothing in 105(b) provides the Subcommittee with the authority to compel the liaison to produce information. In addition, while paragraph 105(d) authorizes the Subcommittee to request additional support service to carry out the purposes of section 102(a), this request is not mandatory. Creating this information sharing network will require technical support, this section authorizes the Antifraud Subcommittee to request and accept support services that it may find necessary.

*Section 106. Agreement on Cost Structure.* The provision contained in Section 106 was not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

#### SUBTITLE C—REGULATORY PROVISIONS

*Section 111. Agency Supervisory Privilege.* This section defines Confidential Supervisory Information (CSI), creates a special privileged status for CSI, and establishes rules for disclosing CSI and resolving disputes over disclosing CSI. It is the intent of the committee that this privileged status for CSI does not confer any new right or privilege to obstruct, delay, or interfere with the ability of any law enforcement agency to access CSI under existing authority. Therefore, any privileged established pursuant to this section shall not be asserted in response to a request from law enforcement, the United States Department of Justice, and criminal law enforcement agencies with relevant jurisdiction. The status of CSI does not create a new privilege from law enforcement investigations. While section 111(b)(2)(A) establishes specific exceptions to the CSI privilege status for the Government Accounting Office, duly authorized Committees of Congress, and Federal agencies with oversight authority, these entities cannot access this informa-

tion because it is compiled on an ad-hoc basis. Law enforcement investigations on the other hand, routinely access this information following various rules of criminal procedure and protections of the Constitution. Therefore, it is the Committee's intent that section 111(b)(2) create no new limitation on law enforcement agencies ability to access this information. It is inherent in establishing any national antifraud database network that law enforcement agencies ability to access information not only be preserved by the network, it is expected to be enhanced provided that constitutional and procedural laws do not prohibit this access. Finally, sections 111(e)(2), and 111(k)(3) provides an action for declaratory judgment in Federal District Court over disputes concerning disclosure of CSI or CSI related information. This declaratory judgement is intended to offer efficient and effective resolution of these disputes.

*Section 112. Confidentiality of Information.* Provisions contained in Section 112 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 113. Liability Provisions.* This section establishes civil liability and criminalizes and penalizes the unlawful disclosure of information that is confidential or privileged pursuant to the Financial Services Antifraud Network Act of 2001. It is the Committee's intent that section 113 does not create any new potential criminal or civil liability for law enforcement individuals that disclose confidential or privileged information pursuant to the Financial Services Antifraud Network Act of 2001.

*Section 114. Authorization for Identification and Criminal Background Check.* This section authorizes a procedure for financial services industry regulators to request criminal background checks from the United States Department of Justice and provide this information to an authorized agent. This section restricts access to this information by carefully defining an authorized agent, which is limited to only highly accountable individuals already in law enforcement or closely associated to law enforcement. Also, the provision delineates permissible uses of background information, establishes a criminal and civil penalties for improper use of background information, and provides a good faith exception for use of background information. This section clarifies section 1033(e)(1)(B) of Title 18, United States Codes, by limiting criminal liability for a financial services industry employer for the illegal conduct of an employee under section 1033(e)(1)(A), so long as the employee is authorized to be in the business of insurance, is licensed to be in the insurance business by a state insurance regulator that performs criminal background checks pursuant to this section of the Financial Services Antifraud Network Act of 2001, and the employer does not know the employee is in violation of section 1033(e)(1)(A). Also, the section provides authority for the Attorney General to collect reasonable fees for fulfilling information requests under this section, that the Attorney General is not precluded from issuing regulations to carry out this section, and that existing authorities allowing access to criminal background records are not limited or superceded by this section.

It is the Committee's intent that subparagraph 114(a)(1)(B)(ii) serve only as an option under the discretion of the Attorney General should the Department of Justice develop the technology to limit background information.

Also, it is the Committee's intent that paragraph 114(a)(4)(A) does not limit the Attorney General's ability to share or receive critical information with any law enforcement agency or financial services industry regulator. This subsection provides that the Attorney General may elect to withhold background information from State financial regulators that are not in compliance with section 321 of P.L. 106–102. In turn, this subsection does not preclude the Attorney General from sharing any information from any state financial services regulator.

*Section 115. Definitions.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 116. Technical and conforming amendments to other acts.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 117. Audit of State Insurance Regulators.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

TITLE II—SECURITIES INDUSTRY COORDINATION  
SUBTITLE A—DISCIPLINARY INFORMATION

*Section 201. Investment Advisers Act of 1940.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 202. Securities Exchange Act of 1934.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

SUBTITLE B—PREVENTING MIGRATION OF ROGUE FINANCIAL  
PROFESSIONALS TO THE SECURITIES INDUSTRY

*Section 211. Securities Exchange Act of 1934.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

*Section 212. Investment Advisers Act of 1940.* Provisions contained in Section 100 were not referred to the Committee on the Judiciary, see H. Rept. 107–192 for analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill, as reported by this committee, does not make any changes to existing law. The bill, as reported by the Committee on Financial Services, does make changes to existing law, which are shown in the report filed on the bill by that committee (Rept. 107–192, Part 1).

MARKUP TRANSCRIPT  
**BUSINESS MEETING**  
**WEDNESDAY, OCTOBER 10, 2001**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to call, at 2:35 p.m., in Room 2141 Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum of 13 is present, and pursuant to notice, I now call up the bill H.R. 1408, the Financial Services Antifraud Network Act of 2001, for purposes of markup, and move its favorable recommendation to the House.

[The bill, H.R. 1408, follows:]

107TH CONGRESS  
1ST SESSION

# H. R. 1408

[Report No. 107- ]

To safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. ROGERS of Michigan (for himself, Mr. OXLEY, Mrs. KELLY, Mr. BACHUS, and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY , 2001

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 4, 2001]

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## A BILL

To safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the “Fi-*  
 3 *ancial Services Antifraud Network Act of 2001”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
 5 *Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Purposes.*

*TITLE I—ANTIFRAUD NETWORK*

*Subtitle A—Direction to Financial Regulators*

*Sec. 100. Creation and operation of the network.*

*Subtitle B—Potential Establishment of Antifraud Subcommittee*

*Sec. 101. Establishment.*

*Sec. 102. Purposes of the Subcommittee.*

*Sec. 103. Chairperson; term of chairperson; meetings; officers and staff.*

*Sec. 104. Nonagency status.*

*Sec. 105. Powers of the Subcommittee.*

*Sec. 106. Agreement on cost structure.*

*Subtitle C—Regulatory Provisions*

*Sec. 111. Agency supervisory privilege.*

*Sec. 112. Confidentiality of information.*

*Sec. 113. Liability provisions.*

*Sec. 114. Authorization for identification and criminal background check.*

*Sec. 115. Definitions.*

*Sec. 116. Technical and conforming amendments to other acts.*

*Sec. 117. Audit of State insurance regulators.*

*TITLE II—SECURITIES INDUSTRY COORDINATION*

*Subtitle A—Disciplinary Information*

*Sec. 201. Investment Advisers Act of 1940.*

*Sec. 202. Securities Exchange Act of 1934.*

*Subtitle B—Preventing Migration of Rogue Financial Professionals to the  
Securities Industry*

*Sec. 211. Securities Exchange Act of 1934.*

*Sec. 212. Investment Advisers Act of 1940.*

6 **SEC. 2. PURPOSES.**

7 *The purposes of this Act are—*

1           (1) to safeguard the public from fraud in the fi-  
2       nancial services industry;

3           (2) to streamline the antifraud coordination ef-  
4       forts of Federal and State regulators and prevent fail-  
5       ure to communicate essential information;

6           (3) to reduce duplicative information requests  
7       by, and other inefficiencies of, financial services regu-  
8       lation;

9           (4) to assist financial regulators in detecting  
10      patterns of fraud, particularly patterns that only be-  
11      come apparent when viewed across the full spectrum  
12      of the financial services industry; and

13          (5) to take advantage of Internet technology and  
14      other advanced data-sharing technology to modernize  
15      the fight against fraud in all of its evolving mani-  
16      festations and permutations.

17   **TITLE I—ANTIFRAUD NETWORK**  
18   **Subtitle A—Direction to Financial**  
19   **Regulators**

20   **SEC. 100. CREATION AND OPERATION OF THE NETWORK.**

21      (a) *SHARING OF PUBLIC INFORMATION.*—The finan-  
22      cial regulators shall, to the extent practicable and appro-  
23      priate and in consultation with other relevant and appro-  
24      priate agencies and parties—

1           (1) *develop procedures to provide for a network*  
2           *for the sharing of antifraud information; and*

3           (2) *coordinate to further improve upon the anti-*  
4           *fraud efforts of the participants in the network as*  
5           *such participants deem appropriate over time.*

6           (b) *MINIMUM REQUIREMENTS.—The procedures de-*  
7           *scribed in subsection (a) shall—*

8           (1) *provide for the sharing of public final dis-*  
9           *ciplinary and formal enforcement actions taken by*  
10           *the financial regulators that are accessible electroni-*  
11           *cally relating to the conduct of persons engaged in the*  
12           *business of conducting financial activities that is*  
13           *fraudulent, dishonest, or involves a breach of trust or*  
14           *relates to the failure to register with the appropriate*  
15           *financial regulator as required by law;*

16           (2) *include a plan for considering the sharing*  
17           *among the participants of other relevant and useful*  
18           *antifraud information relating to companies and*  
19           *other persons engaged in conducting financial activi-*  
20           *ties, to the extent practicable and appropriate when*  
21           *adequate privacy, confidentiality, and security safe-*  
22           *guards governing access to, and the use of, such infor-*  
23           *mation have been developed that—*

24                   (A) *is accessible by the public; or*



1           (B) pertains to information, that does not  
2           include personally identifiable information on  
3           consumers, on—

4                 (i) licenses and applications, financial  
5                 affiliations and name-relationships, aggregate trend data, appraisals, or reports filed  
6                 by a regulated entity with a participant; or

7                 (ii) similar information generated by  
8                 or for a participant if—

9                         (I) such information is being  
10                        shared for the purpose of verifying an  
11                        application or other report filed by a  
12                        regulated entity; and

13                       (II) the participant determines  
14                       such information is factual and substantiated; and

15           (3) provide that, if a financial regulator takes  
16           an adverse action against a person engaged in the  
17           business of conducting financial activities on the basis  
18           of information described in paragraph (1) or (2) that  
19           was received from another participant through the  
20           network, the regulator shall—

21                 (A) notify the person of the identity of the  
22                 participant from whom such information was received;  
23

1           (B) provide the person with a specific and  
2           detailed description of the information that was  
3           received from the other participant through the  
4           network and would be relied on in taking the ad-  
5           verse action; and

6           (C) notify the person of the right to a rea-  
7           sonable opportunity to respond to such informa-  
8           tion.

9       (c) PROVISIONS RELATING TO REQUIREMENTS.—

10           (1) TIME OF NOTICE.—The notice to any person,  
11           and the opportunity to respond, under subsection  
12           (b)(3) shall be provided to the person a reasonable pe-  
13           riod of time before any final action against the person  
14           which is based on information referred to in such  
15           paragraph is completed, unless the financial regulator  
16           determines that such advance notice and opportunity  
17           to respond is impracticable or inappropriate, in  
18           which case the notice and opportunity to respond  
19           shall be provided at the time of such final action.

20           (2) VERIFICATION OR SUBSTANTIATION OF IN-  
21           FORMATION.—With respect to subsection (b)(3), a  
22           delay in the consideration of a license, application,  
23           report, or other request for the purpose of verifying or  
24           substantiating information relating to such license,  
25           application, report, or other request shall not be treat-

1     *ed as an adverse action if the verification or substan-*  
2     *tiation of such information is completed within a rea-*  
3     *sonable time.*

4     *(d) IMPLEMENTATION.—*

5         *(1) SUBMISSION OF PLAN.—Before the end of the*  
6     *6-month period beginning on the date of the enact-*  
7     *ment of this Act, the Federal financial regulators*  
8     *shall submit to Congress a plan detailing how the fi-*  
9     *nancial regulators (and any association representing*  
10    *financial regulators) will meet the requirements of*  
11    *subsections (a) and (b).*

12         *(2) DEADLINE FOR IMPLEMENTATION.—Before*  
13    *the end of the 2-year period beginning on the date of*  
14    *the enactment of this Act, the financial regulators*  
15    *shall establish the network described in subsections (a)*  
16    *and (b).*

17     *(e) FINANCIAL REGULATORS DEFINED.—For the pur-*  
18    *poses of this section, the term “financial regulators” means*  
19    *the financial regulators described in subparagraphs (A)*  
20    *through (Q) of section 115(3).*

21     *(f) DETERMINATION OF IMPLEMENTATION OF SUB-*  
22    *TITLE B.—*

23         *(1) IN GENERAL.—The provisions of subtitle B*  
24    *shall take effect only if the Secretary of the Treasury,*  
25    *or a designee of the Secretary, before the end of the*

1     *30-day period beginning at the end of the period re-*  
2     *ferred to in—*

3             *(A) subsection (d)(1), does not determine*  
4             *that the Federal financial regulators have sub-*  
5             *mitted a plan which substantially meets the re-*  
6             *quirements of such subsection; or*

7             *(B) subsection (d)(2), does not determine*  
8             *that the financial regulators have established a*  
9             *network that substantially complies with the re-*  
10            *quirements of subsections (a) and (b).*

11            *(2) SCOPE OF APPLICATION.—This subtitle shall*  
12            *cease to apply as of the date subtitle B takes effect.*

13            *(g) USE OF CENTRALIZED DATABASES.—*

14            *(1) IN GENERAL.—A financial regulator shall be*  
15            *deemed to have met the requirements of subsection*  
16            *(b)(1) if—*

17            *(A) the participants have access to a cen-*  
18            *tralized database that contains information on*  
19            *public final disciplinary or formal enforcement*  
20            *actions similar to that described in such sub-*  
21            *section; or*

22            *(B) the financial regulator makes the infor-*  
23            *mation described in such subsection available to*  
24            *the public over the Internet.*

1           (2) *STATE SUPERVISORS.—It is the sense of the*  
2           *Congress that the National Association of Insurance*  
3           *Commissioners, the Conference of State Bank Super-*  
4           *visors, the American Council of State Savings Super-*  
5           *visors, the National Association of State Credit Union*  
6           *Supervisors, and the North American Securities Ad-*  
7           *ministrators Association should develop model guide-*  
8           *lines for regulators in their respective regulated finan-*  
9           *cial industries, where appropriate, to promote uni-*  
10          *form standards for sharing information with the net-*  
11          *work under this section.*

12          (h) *FINANCIAL REGULATOR CONTROL OF ACCESS.—*

13               (1) *IN GENERAL.—Except as provided in para-*  
14               *graph (4), each participant that allows access to its*  
15               *databases or information by other participants*  
16               *through the network may establish parameters for*  
17               *controlling or limiting such access, including the reg-*  
18               *ulation of—*

19                       (A) *the type or category of information that*  
20                       *may be accessed by other participants and the*  
21                       *extent to which any such type or category of in-*  
22                       *formation may be accessed;*

23                       (B) *the participants that may have access*  
24                       *to the database or any specific type or category*  
25                       *of information in the database (whether for rea-*

1        *sons of cost reimbursement, data security, effi-*  
2        *ciency, or otherwise); and*

3                *(C) the disclosure by any other participant*  
4        *of any type or category of information that may*  
5        *be accessed by the participant.*

6                *(2) PROCEDURES.—A participant may establish*  
7        *the parameters described in paragraph (1) by regula-*  
8        *tion, order, or guideline or on a case-by-case basis.*

9                *(3) DISCLAIMER.—*

10                *(A) IN GENERAL.—Each participant shall*  
11        *ensure that any transfer of information through*  
12        *the network under this section, other than infor-*  
13        *mation described in paragraphs (1) and (2) of*  
14        *subsection (b), from such participant to another*  
15        *participant is subject to a disclaimer that the in-*  
16        *formation accessed may be unsubstantiated and*  
17        *may not be relied on as the basis for denying*  
18        *any application or license.*

19                *(B) REGULATORY FLEXIBILITY.—Each fi-*  
20        *nancial regulator may develop guidelines, as the*  
21        *regulator determines to be appropriate, gov-*  
22        *erning the location, wording, and frequency of*  
23        *disclaimers under this paragraph and the man-*  
24        *ner in which any such disclaimer shall be made.*

1           (4) *FINAL DISCIPLINARY AND FORMAL ENFORCE-*  
 2           *MENT ACTIONS NOT SUBJECT TO LIMITATION.—This*  
 3           *subsection, and standards or procedures adopted by*  
 4           *any participant under this subsection, shall not apply*  
 5           *with respect to information described in paragraphs*  
 6           *(1) and (2) of subsection (b).*

7           (5) *NO EFFECT ON PUBLIC OR COMPANY AC-*  
 8           *CESS.—No provision of this section shall replace, su-*  
 9           *persede, or otherwise affect access to any databases*  
 10          *maintained by any Federal or State regulator, or any*  
 11          *entity representing any such regulator, which are ac-*  
 12          *cessible by the public or persons engaged in the busi-*  
 13          *ness of conducting financial activities.*

14          (i) *ELIGIBILITY REQUIREMENTS FOR STATE SECURI-*  
 15          *TIES ADMINISTRATORS.—*

16               (1) *IN GENERAL.—No State securities adminis-*  
 17               *trator shall be eligible to be a participant and access*  
 18               *the network unless—*

19                       (A) *such State securities administrator par-*  
 20                       *ticipates in a centralized database for broker-*  
 21                       *dealers, broker-dealer agents, investment advis-*  
 22                       *ers, and investment advisor representatives, reg-*  
 23                       *istered or required to be registered, as designated*  
 24                       *by the North American Securities Administra-*  
 25                       *tors Association; and*

1           (B) *such State securities administrator re-*  
2           *quires the broker-dealer, broker-dealer agent, in-*  
3           *vestment adviser, or investment adviser rep-*  
4           *resentative, currently registered or required to be*  
5           *registered, to file any application, amendment to*  
6           *an application, or a renewal of an application*  
7           *through the centralized registration database.*

8           (2) *TIME DELAY FOR PARTICIPATION IN DATA-*  
9           *BASES.—The provisions of paragraph (1) shall not*  
10          *become effective until 3 years after the date of enact-*  
11          *ment of this Act.*

12          (j) *ELIGIBILITY REQUIREMENTS FOR STATE INSUR-*  
13          *ANCE COMMISSIONERS.—*

14               (1) *PARTICIPATION IN DATABASES.—No State*  
15               *insurance commissioner shall be eligible to access the*  
16               *network unless such commissioner participates with*  
17               *other State insurance commissioners—*

18               (A) *in a centralized database addressing*  
19               *disciplinary or enforcement actions taken*  
20               *against persons engaged in the business of insur-*  
21               *ance, such as the Regulatory Information Re-*  
22               *trieval System maintained by the National Asso-*  
23               *ciation of Insurance Commissioners or any net-*  
24               *work or database designated by such Association*  
25               *as a successor to such System; and*



1           (B) in centralized databases addressing,  
2           with respect to persons engaged in the business  
3           of insurance—

4                 (i) corporate and other business affili-  
5                 ations or relationships, such as the Pro-  
6                 ducer Database maintained by the National  
7                 Association of Insurance Commissioners or  
8                 any network or database designated by such  
9                 Association as a successor to such Database;  
10                and

11               (ii) consumer complaints, such as the  
12               Complaints Database maintained by the  
13               National Association of Insurance Commis-  
14               sioners or any network or database des-  
15               ignated by such Association as a successor  
16               to such Database.

17           (2) TIME DELAY FOR PARTICIPATION IN DATA-  
18           BASES.—The provisions of subparagraph (1)(B) of  
19           this section shall not become effective until 3 years  
20           after the date of enactment of this Act.

21           (3) ACCREDITATION.—No State insurance com-  
22           missioner shall be eligible to access the network unless  
23           the State insurance department which such commis-  
24           sioner represents meets 1 of the following accredita-  
25           tion requirements at the time of access to the network:

1           (A) *Is accredited by the National Association*  
2           *of Insurance Commissioners.*

3           (B) *Has an application for accredited status*  
4           *pending with the National Association of Insurance*  
5           *Commissioners.*

6           (C) *Has a determination by the Subcommittee*  
7           *in effect that such State insurance department*  
8           *meets or exceeds the standards established by the National Association of Insurance*  
9           *Commissioners for accreditation.*

10          (k) *STANDARDS.—Each financial regulator shall consider*  
11          *developing guidelines for participants on—*

12           (1) *how to denote which types of information are*  
13           *to receive different levels of confidentiality protection;*  
14           *and*  
15           

16           (2) *how entities or associations that act as*  
17           *agents for financial regulators should denote such*  
18           *agency status when acting in that capacity.*

19          (l) *OTHER SHARING ARRANGEMENTS NOT AFFECTED.—No provision of this section shall be construed*  
20          *as limiting or otherwise affecting the authority of a financial*  
21          *regulator to provide any person, including another participant,*  
22          *access to any information in accordance with any*  
23          *provision of law other than this Act.*  
24

1 ***Subtitle B—Potential Establishment of Antifraud Subcommittee***  
 2

3 ***SEC. 101. ESTABLISHMENT.***

4       (a) *IN GENERAL.*—Unless the determinations described  
 5 in section 100(f) are made, after the applicable date de-  
 6 scribed in such section there shall be established within the  
 7 President’s Working Group on Financial Markets (as estab-  
 8 lished by Executive Order No. 12631) a subcommittee to  
 9 be known as the “Antifraud Subcommittee” (hereafter in  
 10 this title referred to as the “Subcommittee”) which shall  
 11 consist of the following members:

12               (1) *The Secretary of the Treasury, or a designee*  
 13 *of the Secretary.*

14               (2) *The Chairman of the Securities and Ex-*  
 15 *change Commission or a designee of the Chairman.*

16               (3) *A State insurance commissioner designated*  
 17 *by the National Association of Insurance Commis-*  
 18 *sioners, or a designee of such commissioner.*

19               (4) *The Chairman of the Commodity Futures*  
 20 *Trading Commission or a designee of such Chairman.*

21               (5) *A designee of the Chairman of the Federal*  
 22 *Financial Institutions Examination Council.*

23       (b) *FINANCIAL LIAISONS.*—The following shall serve as  
 24 *liaisons between the Subcommittee and the agencies rep-*  
 25 *resented by each such liaison:*

1           (1) *A representative of each Federal banking*  
2           *agency appointed by the head of each such agency.*

3           (2) *A representative of the National Credit*  
4           *Union Administration appointed by the National*  
5           *Credit Union Administration Board.*

6           (3) *A representative of the Farm Credit Admin-*  
7           *istration, appointed by the Farm Credit Administra-*  
8           *tion Board.*

9           (4) *A representative of the Federal Housing Fi-*  
10          *nance Board, appointed by such Board.*

11          (5) *A representative of the Office of Federal*  
12          *Housing Enterprise Oversight of the Department of*  
13          *Housing and Urban Development appointed by the*  
14          *Director of such Office.*

15          (6) *A representative of the Appraisal Sub-*  
16          *committee of the Financial Institutions Examination*  
17          *Council.*

18          (7) *A representative of State bank supervisors*  
19          *designated by the Conference of State Bank Super-*  
20          *visors.*

21          (8) *A representative of State savings association*  
22          *supervisors designated by the American Council of*  
23          *State Savings Supervisors.*

1           (9) *A representative of State credit union super-*  
2 *visors designated by the National Association of State*  
3 *Credit Union Supervisors.*

4           (10) *A representative of State securities adminis-*  
5 *trators designated by the North American Securities*  
6 *Administrators Association.*

7           (11) *A representative of the National Association*  
8 *of Securities Dealers appointed by the National Asso-*  
9 *ciation of Securities Dealers.*

10          (12) *A representative of the National Futures As-*  
11 *sociation appointed by the National Futures Associa-*  
12 *tion.*

13          (13) *Any other financial liaison as the Sub-*  
14 *committee may provide to represent any other finan-*  
15 *cial regulator or foreign financial regulator, includ-*  
16 *ing self-regulatory agencies or organizations that*  
17 *maintain significant databases on persons engaged in*  
18 *the business of conducting financial activities, des-*  
19 *ignated in the manner provided by the Subcommittee.*

20          (c) *OTHER LIAISONS.—*

21           (1) *LAW ENFORCEMENT LIAISONS.—The fol-*  
22 *lowing shall serve as liaisons between the Sub-*  
23 *committee and the agencies represented by each such*  
24 *liaison:*

1           (A) *A representative of the Department of*  
2           *Justice appointed by the Attorney General.*

3           (B) *A representative of the Federal Bureau*  
4           *of Investigation appointed by the Director of*  
5           *such Bureau.*

6           (C) *A representative of the United States*  
7           *Secret Service appointed by the Director of such*  
8           *Service.*

9           (D) *A representative of the Financial*  
10          *Crimes Enforcement Network (as established by*  
11          *the Secretary of the Treasury) appointed by the*  
12          *Secretary of the Treasury.*

13          (2) *SUBCOMMITTEE APPOINTED LIAISONS.—The*  
14          *Subcommittee may provide for any other liaison to*  
15          *represent any other regulator, including self-regu-*  
16          *latory agencies or organizations that maintain data-*  
17          *bases on persons engaged in the business of con-*  
18          *ducting financial activities, designated in the manner*  
19          *provided by the Subcommittee.*

20          (d) *VACANCY.—If, for any reason, the position of any*  
21          *member of or liaison to the Subcommittee is not filled with-*  
22          *in a reasonable period of time after being created or becom-*  
23          *ing vacant, the President shall appoint an individual to*  
24          *fill the position after consulting the agency or entity to be*  
25          *represented by such member or liaison, and to the extent*

1 possible, shall appoint such individual from a list of pos-  
2 sible representatives submitted by such agency or entity.

3 (e) *REORGANIZATION AUTHORITY.*—

4 (1) *IN GENERAL.*—If the President disbands or  
5 otherwise significantly modifies the Working Group  
6 referred to in subsection (a), the President shall pro-  
7 vide for the continuation of the Subcommittee’s co-  
8 ordination functions.

9 (2) *MEMBER AND LIAISON WITHDRAWAL.*—If the  
10 President materially alters the structure or duties of  
11 the Subcommittee, any member of or liaison to the  
12 Subcommittee may withdraw from the Subcommittee.

13 **SEC. 102. PURPOSES OF THE SUBCOMMITTEE.**

14 (a) *IN GENERAL.*—The purposes of the Subcommittee  
15 are as follows:

16 (1) Coordinate access by the participants to  
17 antifraud databases of various regulators, by facili-  
18 tating the establishment, maintenance, and use of a  
19 network of existing antifraud information maintained  
20 by such regulators with respect to persons engaged in  
21 the business of conducting financial activities.

22 (2) Coordinate access by each participant to such  
23 network in a manner that allows the participant to  
24 review, at a minimal cost, existing information in the  
25 databases of other regulators, as a part of licensure,

1     *change of control, or investigation, concerning any*  
 2     *person engaged in the business of conducting finan-*  
 3     *cial activities.*

4             *(3) Coordinate information sharing, where ap-*  
 5     *propriate, among State, Federal, and foreign finan-*  
 6     *cial regulators, and law enforcement agencies, where*  
 7     *sufficient privacy and confidentiality safeguards*  
 8     *exist.*

9             *(4) Consider coordinating development by par-*  
 10    *ticipants of a networked name-relationship index for*  
 11    *persons engaged in the business of conducting finan-*  
 12    *cial activities using information from the databases of*  
 13    *regulators, to the extent such information is available.*

14            *(5) Advise participants on coordinating their*  
 15    *antifraud databases with the network.*

16            *(6) Coordinate development of guidelines by par-*  
 17    *ticipants for ensuring appropriate privacy, confiden-*  
 18    *tiality, and security of shared information, including*  
 19    *tracking systems or testing audits, as appropriate.*

20    *(b) CRITERIA FOR NETWORK WITH RESPECT TO ANY*  
 21    *PERSON ENGAGED IN THE BUSINESS OF CONDUCTING FI-*  
 22    *NANCIAL ACTIVITIES.—*

23            *(1) FINAL DISCIPLINARY AND FORMAL ENFORCE-*  
 24    *MENT ACTIONS.—Each financial regulator that is rep-*  
 25    *resented by a member of the Subcommittee under sec-*



1     *tion 101(a) or by a financial liaison to the Sub-*  
2     *committee under section 101(b) shall allow any par-*  
3     *ticipant access, through the network, to any public*  
4     *final disciplinary or formal enforcement action by*  
5     *such regulator which is accessible electronically relat-*  
6     *ing to the conduct of persons engaged in the business*  
7     *of conducting financial activities that is fraudulent or*  
8     *dishonest, involves a breach of trust, or relates to the*  
9     *failure to register with the appropriate financial reg-*  
10    *ulator as required by law.*

11         (2) *SENSE OF THE CONGRESS ON OTHER INFOR-*  
12    *MATION.—It is the sense of the Congress that the fi-*  
13    *nancial regulators should consider sharing through*  
14    *the network other relevant and useful antifraud infor-*  
15    *mation relating to companies and other persons en-*  
16    *gaged in conducting financial activities, to the extent*  
17    *practicable and appropriate when adequate privacy,*  
18    *confidentiality, and security safeguards governing ac-*  
19    *cess to and the use of such information have been de-*  
20    *veloped that—*

21                 (A) *is accessible by the public; or*

22                 (B) *consists of information, that does not*  
23                 *include personally identifiable information on*  
24                 *consumers, on—*

1           (i) licenses and applications, financial  
2           affiliations and name-relationships, aggregate trend data, or reports filed by a regulated entity with the participant; or

3           (ii) similar information generated by  
4           or for a participant if—

5                 (I) such information is being  
6                 shared for the purpose of verifying an  
7                 application or other report filed by a  
8                 regulated entity; and

9                 (II) the participant determines  
10                such information is factual and substantiated; and

11           (3) NOTICE AND RESPONSE.—If a financial regulator takes an adverse action against a person engaged in the business of conducting financial activities on the basis of information described in paragraph (1) or (2) that was received from another participant through the network, the regulator shall—

12                 (A) notify the person of the identity of the  
13                 participant from whom such information was received;

14                 (B) provide the person with a specific and  
15                 detailed description of the information that was  
16                 received from the other participant through the

1        *network and would be relied on in taking the ad-*  
2        *verse action; and*

3                *(C) notify the person of the right to a rea-*  
4        *sonable opportunity to respond to such informa-*  
5        *tion.*

6        *(4) PROVISIONS RELATING TO REQUIREMENTS.—*

7                *(A) TIME OF NOTICE.—Any notice to any*  
8        *person, and an opportunity to respond, under*  
9        *paragraph (3) shall be provided to the person a*  
10       *reasonable period of time before any final action*  
11       *against the person which is based on information*  
12       *referred to in such paragraph is completed, un-*  
13       *less the financial regulator determines that such*  
14       *advance notice and opportunity to respond is*  
15       *impracticable or inappropriate, in which case*  
16       *the notice and opportunity to respond shall be*  
17       *provided at the time of such final action.*

18                *(B) VERIFICATION OR SUBSTANTIATION OF*  
19        *INFORMATION.—With respect to information re-*  
20        *ferred to in paragraph (3), a delay in the con-*  
21        *sideration of a license, application, report, or*  
22        *other request for the purpose of verifying or sub-*  
23        *stantiating information relating to such license,*  
24        *application, report, or other request shall not be*  
25        *treated as an adverse action if the verification or*

1       *substantiation of such information is completed*  
2       *within a reasonable time.*

3       (5) *USE OF CENTRALIZED DATABASES.—*

4               (A) *IN GENERAL.—A financial regulator*  
5       *shall be deemed to have met the requirements of*  
6       *paragraph (1) if the Subcommittee determines*  
7       *that the participants have access to a centralized*  
8       *database that contains information on public*  
9       *final disciplinary or formal enforcement actions*  
10       *similar to that described in paragraph (1) or if*  
11       *the financial regulator makes the information*  
12       *described in paragraph (1) available to the pub-*  
13       *lic over the Internet.*

14              (B) *FACTORS FOR DETERMINATION.—The*  
15       *Subcommittee shall make the determination*  
16       *under subparagraph (A) on an ongoing basis,*  
17       *considering both short-term costs and techno-*  
18       *logical limitations, as well as the need for long-*  
19       *term comprehensive coverage, and other appro-*  
20       *priate factors.*

21              (C) *STATE SUPERVISORS.—It is the sense of*  
22       *the Congress that the National Association of In-*  
23       *surance Commissioners, the Conference of State*  
24       *Bank Supervisors, the American Council of State*  
25       *Savings Supervisors, the National Association of*

1           *State Credit Union Supervisors, and the North*  
2           *American Securities Administrators Association*  
3           *should develop model guidelines for regulators in*  
4           *their respective regulated financial industries,*  
5           *where appropriate, to promote uniform stand-*  
6           *ards for sharing information with the network*  
7           *under this section.*

8           (c) *FINANCIAL REGULATOR CONTROL OF ACCESS.—*

9           (1) *IN GENERAL.—Except as provided in para-*  
10          *graph (4), each participant that allows access to its*  
11          *databases or information by other participants*  
12          *through the network may establish parameters for*  
13          *controlling or limiting such access, including the reg-*  
14          *ulation of—*

15                (A) *the type or category of information that*  
16                *may be accessed by other participants and the*  
17                *extent to which any such type or category of in-*  
18                *formation may be accessed;*

19                (B) *the participants that may have access*  
20                *to the database or any specific type or category*  
21                *of information in the database (whether for rea-*  
22                *sons of cost reimbursement, data security, effi-*  
23                *ciency, or otherwise); and*

1                   (C) the disclosure by any other participant  
2                   of any type or category of information that may  
3                   be accessed by the participant.

4                   (2) *PROCEDURES.*—A participant may establish  
5                   the parameters described in paragraph (1) by regula-  
6                   tion, order, or guideline or on a case-by-case basis.

7                   (3) *DISCLAIMER.*—

8                   (A) *IN GENERAL.*—Each participant shall  
9                   ensure that any transfer of information through  
10                  the network under this section, other than infor-  
11                  mation described in paragraphs (1) and (2) of  
12                  subsection (b), from such participant to another  
13                  participant is subject to a disclaimer that the in-  
14                  formation accessed may be unsubstantiated and  
15                  may not be relied on as the basis for denying  
16                  any application or license.

17                  (B) *SUBCOMMITTEE FLEXIBILITY.*—The  
18                  Subcommittee may prescribe such guidelines as  
19                  the Subcommittee determines to be appropriate  
20                  governing the location, wording, and frequency  
21                  of disclaimers under this paragraph and the  
22                  manner in which any such disclaimer shall be  
23                  made.

24                  (4) *FINAL DISCIPLINARY AND FORMAL ENFORCE-*  
25                  *MENT ACTIONS NOT SUBJECT TO LIMITATION.*—This

1 subsection, and standards or procedures adopted by  
2 any participant under this subsection, shall not apply  
3 with respect to information described in paragraphs  
4 (1) and (2) of subsection (b).

5 (5) NO EFFECT ON PUBLIC OR COMPANY AC-  
6 CESS.—No provision of this section shall replace, su-  
7 persede, or otherwise affect access to any databases  
8 maintained by any Federal or State regulator, or any  
9 entity representing any such regulator, which are ac-  
10 cessible by the public or persons engaged in the busi-  
11 ness of conducting financial activities.

12 (d) ELIGIBILITY REQUIREMENTS FOR STATE SECURI-  
13 TIES ADMINISTRATORS.—

14 (1) IN GENERAL.—No State securities adminis-  
15 trator shall be eligible to be a participant and access  
16 the network unless—

17 (A) such State securities administrator par-  
18 ticipates in a centralized database for broker-  
19 dealers, broker-dealer agents, investment advis-  
20 ers, and investment advisor representatives, reg-  
21 istered or required to be registered, as designated  
22 by the North American Securities Administra-  
23 tors Association; and

24 (B) such State securities administrator re-  
25 quires the broker-dealer, broker-dealer agent, in-

1           *vestment adviser, or investment adviser rep-*  
2           *resentative, currently registered or required to be*  
3           *registered, to file any application, amendment to*  
4           *an application, or a renewal of an application*  
5           *through the centralized registration database.*

6           (2) *TIME DELAY FOR PARTICIPATION IN DATA-*  
7           *BASES.—The provisions of paragraph (1) shall not*  
8           *become effective until 3 years after the date of enact-*  
9           *ment of this Act.*

10          (e) *ELIGIBILITY REQUIREMENTS FOR STATE INSUR-*  
11          *ANCE COMMISSIONERS.—*

12           (1) *PARTICIPATION IN DATABASES.—No State*  
13           *insurance commissioner shall be eligible to access the*  
14           *network unless such commissioner participates with*  
15           *other State insurance commissioners—*

16           (A) *in a centralized database addressing*  
17           *disciplinary or enforcement actions taken*  
18           *against persons engaged in the business of insur-*  
19           *ance, such as the Regulatory Information Re-*  
20           *trieval System maintained by the National Asso-*  
21           *ciation of Insurance Commissioners or any net-*  
22           *work or database designated by such Association*  
23           *as a successor to such System; and*



1           (B) in centralized databases addressing,  
2           with respect to persons engaged in the business  
3           of insurance—

4                 (i) corporate and other business affili-  
5                 ations or relationships, such as the Pro-  
6                 ducer Database maintained by the National  
7                 Association of Insurance Commissioners or  
8                 any network or database designated by such  
9                 Association as a successor to such Database;  
10                and

11               (ii) consumer complaints, such as the  
12               Complaints Database maintained by the  
13               National Association of Insurance Commis-  
14               sioners or any network or database des-  
15               ignated by such Association as a successor  
16               to such Database.

17           (2) TIME DELAY FOR PARTICIPATION IN DATA-  
18           BASES.—The provisions of subparagraph (1)(B) of  
19           this section shall not become effective until 3 years  
20           after the date of enactment of this Act.

21           (3) ACCREDITATION.—No State insurance com-  
22           missioner shall be eligible to access the network unless  
23           the State insurance department which such commis-  
24           sioner represents meets 1 of the following accredita-  
25           tion requirements at the time of access to the network:

1           (A) *Is accredited by the National Association*  
 2           *tion of Insurance Commissioners.*

3           (B) *Has an application for accredited sta-*  
 4           *tus pending with the National Association of In-*  
 5           *surance Commissioners.*

6           (C) *Has a determination by the Sub-*  
 7           *committee in effect that such State insurance de-*  
 8           *partment meets or exceeds the standards estab-*  
 9           *lished by the National Association of Insurance*  
 10          *Commissioners for accreditation.*

11       (f) *SUBCOMMITTEE STANDARDS.—The Subcommittee*  
 12       *shall consider developing guidelines for participants on—*

13           (1) *how to denote which types of information are*  
 14           *to receive different levels of confidentiality protection;*  
 15           *and*

16           (2) *how entities or associations that act as*  
 17           *agents for financial regulators should denote such*  
 18           *agency status when acting in that capacity.*

19       (g) *REPORTING AND FEASIBILITY REQUIREMENTS AND*  
 20       *REVIEW OF OPTIMAL NETWORKING METHODS.—*

21           (1) *REPORT.—Before the end of the 180-day pe-*  
 22           *riod beginning on the date this subtitle takes effect in*  
 23           *accordance with section 101(a), and again before the*  
 24           *end of the 2-year period beginning on such date, the*  
 25           *Subcommittee shall submit a report to the Congress*

1     *regarding the methods the regulators plan to use to*  
 2     *network information, and a description of any im-*  
 3     *pediments to (or recommended additional legislation*  
 4     *for) facilitating the appropriate sharing of such infor-*  
 5     *mation.*

6             (2) *TIMEFRAME FOR NETWORKING.*—

7                 (A) *IN GENERAL.*—*The networking of infor-*  
 8                 *mation required under subsection (b)(1) shall be*  
 9                 *established before the end of the 2-year period be-*  
 10                *ginning on the date this subtitle takes effect, un-*  
 11                *less the Subcommittee determines, in conjunction*  
 12                *with the liaisons, that such a network cannot be*  
 13                *established within such time period in a prac-*  
 14                *ticable and cost-effective manner.*

15               (B) *REPORTS ON EFFORTS IF TIMEFRAME*  
 16                *IS NOT MET.*—*If the Subcommittee makes such a*  
 17                *determination, the Subcommittee shall report an-*  
 18                *nually to the Congress on its efforts to coordinate*  
 19                *the sharing of appropriate information among*  
 20                *the regulators until the networking requirements*  
 21                *are fulfilled.*

22             (h) *OTHER SHARING ARRANGEMENTS NOT AF-*  
 23             *FFECTED.*—*No provision of this section shall be construed*  
 24             *as limiting or otherwise affecting the authority of a finan-*  
 25             *cial regulator or other member or liaison of the Sub-*

1 *committee to provide any person, including another partici-*  
2 *pant, access to any information in accordance with any*  
3 *provision of law other than this Act.*

4 (i) *NO NEW DATABASES OR EXPENDITURES MAN-*  
5 *DATED.—In implementing this Act, the Subcommittee shall*  
6 *not have any authority to require a member or liaison to*  
7 *create a new database or otherwise incur significant costs*  
8 *in modifying existing databases for the networking of infor-*  
9 *mation.*

10 **SEC. 103. CHAIRPERSON; TERM OF CHAIRPERSON; MEET-**  
11 **INGS; OFFICERS AND STAFF.**

12 (a) *CHAIRPERSON.—*

13 (1) *SELECTION.—The members of the Sub-*  
14 *committee shall select the Chairperson from among*  
15 *the members of the Subcommittee.*

16 (2) *TERM.—The term of the Chairperson shall be*  
17 *2 years.*

18 (b) *MEETINGS.—The Subcommittee shall meet at the*  
19 *call of the Chairperson or a majority of the members when*  
20 *there is business to be conducted.*

21 (c) *QUORUM.—A majority of members of the Sub-*  
22 *committee shall constitute a quorum.*

23 (d) *MAJORITY VOTE.—Decisions of the Subcommittee*  
24 *shall be made by the vote of a majority of the members of*  
25 *the Subcommittee.*

1       (e) *OFFICERS AND STAFF.*—*The Chairperson of the*  
2       *Subcommittee may appoint such officers and staff as may*  
3       *be necessary to carry out the purposes of the Subcommittee.*

4       **SEC. 104. NONAGENCY STATUS.**

5       *The Subcommittee shall not be considered an advisory*  
6       *committee for purposes of the Federal Advisory Committee*  
7       *Act or as an agency for purposes of subchapter II of chapter*  
8       *5 of title 5, United States Code.*

9       **SEC. 105. POWERS OF THE SUBCOMMITTEE.**

10       (a) *IN GENERAL.*—*The Subcommittee shall have such*  
11       *powers as are necessary to carry out the purposes of the*  
12       *Subcommittee under this title.*

13       (b) *INFORMATION TO FACILITATE COORDINATION.*—  
14       *Each agency and entity represented by a member or liaison*  
15       *shall, to the extent permitted by law, provide the Sub-*  
16       *committee with a description of the types of databases*  
17       *maintained by the agency or entity to assist the Sub-*  
18       *committee in carrying out the purposes described in section*  
19       *102(a).*

20       (c) *SERVICE OF MEMBERS AND LIAISONS.*—*Members*  
21       *of and liaisons to the Subcommittee shall serve without ad-*  
22       *ditional compensation for their work on the Subcommittee.*

23       (d) *ADMINISTRATIVE AND TECHNICAL SUPPORT.*—*The*  
24       *Subcommittee may request that any agency or entity rep-*  
25       *resented by a member or liaison provide the Subcommittee*

1 *with any administrative, technical, or other support service*  
2 *that the Subcommittee determines is necessary or appro-*  
3 *priate for it to carry out the purposes described in section*  
4 *102(a).*

5 **SEC. 106. AGREEMENT ON COST STRUCTURE.**

6       (a) *IN GENERAL.*—*The Subcommittee shall determine,*  
7 *after consultation with the affected participants or their*  
8 *representatives, the means for providing for any costs the*  
9 *Subcommittee may incur in carrying out the purposes of*  
10 *this subtitle.*

11       (b) *CONSULTATION AND AGREEMENT ON FEES AND*  
12 *CONTRIBUTIONS.*—*Notwithstanding any other provision of*  
13 *this subtitle, the Subcommittee may not impose any fee or*  
14 *assessment on, or apportion any contribution against, any*  
15 *member or liaison under this section unless—*

16               (1) *the Subcommittee consults with such member*  
17 *or liaison; and*

18               (2) *the member or liaison consents to the*  
19 *amounts, or to a schedule, of such fees, assessments,*  
20 *or contributions.*

21       (c) *REIMBURSEMENT OF PARTICIPANT COSTS.*—*Before*  
22 *allowing access by the Subcommittee or a participant to*  
23 *any information described in section 102, other than access*  
24 *described in subsection (b)(1) of such section, a member or*

1 *liaison may request the reimbursement of reasonable costs*  
 2 *for providing such access.*

### 3 ***Subtitle C—Regulatory Provisions***

#### 4 ***SEC. 111. AGENCY SUPERVISORY PRIVILEGE.***

5 *(a) DEFINITIONS.—For purposes of this section, the*  
 6 *following definitions shall apply:*

7 *(1) SUPERVISORY PROCESS.—The term “super-*  
 8 *visory process” means any activity engaged in by a*  
 9 *financial regulator to carry out the official respon-*  
 10 *sibilities of the financial regulator with regard to the*  
 11 *regulation or supervision of persons engaged in the*  
 12 *business of conducting financial activities, including*  
 13 *examinations, inspections, visitations, investigations,*  
 14 *consumer complaints, or any other regulatory or su-*  
 15 *pervisory activities.*

16 *(2) CONFIDENTIAL SUPERVISORY INFORMA-*  
 17 *TION.—Subject to paragraph (3), the term “confiden-*  
 18 *tial supervisory information” means any of the fol-*  
 19 *lowing information which is treated as, or considered*  
 20 *to be, confidential information by a financial regu-*  
 21 *lator, regardless of the form or format in which the*  
 22 *information is created, conveyed, or maintained:*

23 *(A) Any report of examination, inspection,*  
 24 *visitation, or investigation, and information pre-*  
 25 *pared or collected by the financial regulator in*

1 connection with the supervisory process,  
2 including—

3 (i) any file, work paper, or similar in-  
4 formation;

5 (ii) any correspondence, communica-  
6 tion, or information exchanged, in connec-  
7 tion with the supervisory process, between a  
8 financial regulator and a person engaged in  
9 the business of conducting financial activi-  
10 ties; and

11 (iii) any information, including any  
12 report, created by or on behalf of a person  
13 engaged in the business of conducting finan-  
14 cial activities that is required by, or is pre-  
15 pared at the request of, a financial regu-  
16 lator in connection with the supervisory  
17 process.

18 (B) Any record to the extent it contains in-  
19 formation derived from any report, correspond-  
20 ence, communication or other information de-  
21 scribed in subparagraph (A).

22 (C) Any consumer complaints filed with the  
23 financial regulator by a consumer with respect  
24 to a person engaged in the business of conducting  
25 financial activities that have been identified by



1       *the financial regulator as requiring confidential*  
2       *treatment to protect the integrity of an inves-*  
3       *tigation or the safety of an individual.*

4       (3) *EXCLUSIONS.—The term “confidential super-*  
5       *visory information” shall not include—*

6               (A) *any book, record, or other information,*  
7               *in the possession of, or maintained on behalf of,*  
8               *the person engaged in the business of conducting*  
9               *financial activities that—*

10                   (i) *is not a report required by, or pre-*  
11                   *pared at the request of, a financial regu-*  
12                   *lator; and*

13                   (ii) *is not, and is not derived from,*  
14                   *confidential supervisory information that*  
15                   *was created or prepared by a financial reg-*  
16                   *ulator; or*

17               (B) *any information required to be made*  
18               *publicly available by—*

19                   (i) *any applicable Federal law or regu-*  
20                   *lation; or*

21                   (ii) *in the case of confidential super-*  
22                   *visory information created by a State fi-*  
23                   *nancial regulator or requested from a per-*  
24                   *son engaged in the business of conducting*  
25                   *financial activities by a State financial reg-*

1                    *ulator, any applicable State law or regula-*  
 2                    *tion that specifically refers to such type of*  
 3                    *information.*

4        (b) *FINANCIAL REGULATOR SUPERVISORY PRIVI-*  
 5 *LEGE.—*

6                    (1) *PRIVILEGE ESTABLISHED.—*

7                    (A) *IN GENERAL.—All confidential super-*  
 8                    *visory information shall be privileged from dis-*  
 9                    *closure to any person except as provided in this*  
 10                    *section.*

11                    (B) *PROHIBITION ON UNAUTHORIZED DIS-*  
 12                    *CLOSURES.—No person in possession of confiden-*  
 13                    *tial supervisory information may disclose such*  
 14                    *information, in whole or in part, without the*  
 15                    *prior authorization of the financial regulator*  
 16                    *that created the information, or requested the in-*  
 17                    *formation from a person engaged in the business*  
 18                    *of conducting financial activities, except for a*  
 19                    *disclosure made in published statistical material*  
 20                    *that does not disclose, either directly or when*  
 21                    *used in conjunction with publicly available in-*  
 22                    *formation, the affairs of any person or other per-*  
 23                    *sonally identifiable information.*

24                    (C) *AGENCY WAIVER.—The financial regu-*  
 25                    *lator that created the confidential supervisory*

1 *information, or requested the confidential super-*  
2 *visory information from a person engaged in the*  
3 *business of conducting financial activities, may*  
4 *waive, in whole or in part, in the discretion of*  
5 *the regulator, any privilege established under*  
6 *this paragraph with respect to such information.*

7 (2) *EXCEPTIONS.—*

8 (A) *ACCESS BY GOVERNMENTAL BODIES.—*

9 (i) *CONGRESS AND GENERAL ACCOUNT-*  
10 *ING OFFICE.—No provision of paragraph*  
11 *(1) shall be construed as preventing access*  
12 *to confidential supervisory information by*  
13 *duly authorized committees of the Congress*  
14 *or the Comptroller General of the United*  
15 *States.*

16 (ii) *FINANCIAL REGULATOR OVER-*  
17 *SIGHT.—No financial regulator which is de-*  
18 *scribed in subparagraph (P), (Q), or (R) of*  
19 *section 115(3) and is subject to the oversight*  
20 *of a Federal financial regulator may assert*  
21 *the privilege described in paragraph (1) to*  
22 *prevent access to confidential supervisory*  
23 *information by such Federal financial regu-*  
24 *lator.*

1                   (B) *PRIVILEGE NOT WAIVED.*—If a finan-  
2                   cial regulator provides access to confidential su-  
3                   pervisory information to the Congress, the Comp-  
4                   troller General, or another financial regulator,  
5                   such action shall not affect the ability of the fi-  
6                   nancial regulator to assert any privilege associ-  
7                   ated with such information against any other  
8                   person.

9                   (c) *TREATMENT OF FOREIGN SUPERVISORY INFORMA-*  
10                  *TION.*—In any proceeding before a Federal or State court  
11                  of the United States, in which a person seeks to compel pro-  
12                  duction or disclosure by a financial regulator of informa-  
13                  tion or documents prepared or collected by a foreign finan-  
14                  cial regulator that would, had the information or document  
15                  been prepared or collected by a financial regulator, be con-  
16                  fidential supervisory information for purposes of this sec-  
17                  tion, the information or document shall be privileged to the  
18                  same extent that the information and documents of finan-  
19                  cial regulators are privileged under this title.

20                  (d) *OTHER PRIVILEGES NOT WAIVED BY DISCLOSURE*  
21                  *TO FINANCIAL REGULATOR.*—The submission by a person  
22                  engaged in the business of conducting financial activities  
23                  of any information to a financial regulator or a foreign  
24                  financial regulator in connection with the supervisory proc-  
25                  ess of such financial regulator or foreign financial regulator

1 *shall not waive, destroy, or otherwise affect any privilege*  
2 *such person may claim with respect to such information*  
3 *under Federal or State law as to a party other than such*  
4 *financial regulator or foreign financial regulator.*

5 (e) *DISCOVERY AND DISCLOSURE OF INFORMATION.—*

6 (1) *INFORMATION AVAILABLE ONLY FROM FINAN-*  
7 *CIAL REGULATOR.—*

8 (A) *IN GENERAL.—No person (other than*  
9 *the financial regulator that created the informa-*  
10 *tion or requested the information from a person*  
11 *engaged in the business of conducting financial*  
12 *activities) may disclose, in whole or in part, any*  
13 *confidential supervisory information to any per-*  
14 *son who seeks such information through sub-*  
15 *poena, discovery procedures, or otherwise.*

16 (B) *PROCEDURE FOR REQUESTS SUB-*  
17 *MITTED TO FINANCIAL REGULATOR.—*

18 (i) *IN GENERAL.—Any request for dis-*  
19 *covery or disclosure of confidential super-*  
20 *visory information shall be made to the fi-*  
21 *nancial regulator that created the informa-*  
22 *tion, or requested the information from a*  
23 *person engaged in the business of con-*  
24 *ducting financial activities.*

1           (ii) *PROCEDURE.*—Upon receiving a  
2           request for confidential supervisory infor-  
3           mation, the financial regulator shall deter-  
4           mine within a reasonable time period  
5           whether to disclose such information pursu-  
6           ant to procedures and criteria established  
7           by the financial regulator.

8           (C) *NOTIFICATION.*—

9           (i) *IN GENERAL.*—Before any financial  
10          regulator releases information that was re-  
11          quested from a person engaged in the busi-  
12          ness of conducting financial activities to a  
13          person under subparagraph (B), notice and  
14          a reasonable time for comment shall be pro-  
15          vided to the person from whom such infor-  
16          mation was requested unless such  
17          information—

18                (I) is being provided to another fi-  
19                nancial regulator, an agency or entity  
20                represented by a liaison to the Sub-  
21                committee, or a Federal, State, or for-  
22                eign government (or any agency or in-  
23                strumentality of any such government  
24                acting in any capacity);

1           (II) is being sought for use in a  
2           criminal proceeding or investigation,  
3           or a regulatory, supervisory, enforce-  
4           ment, or disciplinary administrative  
5           proceeding, civil action, or investiga-  
6           tion; or

7           (III) was originally created, or  
8           included in information created, by the  
9           financial regulator.

10          (ii) PROCEDURES AND REQUIRE-  
11          MENTS.—A financial regulator may pre-  
12          scribe regulations, or issue orders, guide-  
13          lines, or procedures, governing the notice  
14          and time period required by clause (i).

15          (2) FEDERAL COURT JURISDICTION OVER DIS-  
16          PUTES.—

17          (A) REMOVAL AUTHORITY.—In any action  
18          or proceeding in which a party seeks to compel  
19          disclosure of confidential supervisory informa-  
20          tion, a financial regulator may, in its sole dis-  
21          cretion, elect to remove the matter relating to the  
22          disclosure issue to Federal court, and, if the ac-  
23          tion is so removed, the appropriate Federal court  
24          shall have exclusive jurisdiction over such mat-  
25          ter.

1           (B) *JUDICIAL REVIEW.*—*Judicial review of*  
2           *the final action of a financial regulator with re-*  
3           *gard to the disposition of a request for confiden-*  
4           *tial supervisory information shall be before a*  
5           *district court of the United States of competent*  
6           *jurisdiction, subject to chapter 7 of part I of title*  
7           *5, United States Code.*

8           (f) *AUTHORITY TO INTERVENE.*—*In the case of any*  
9           *action or proceeding to compel compliance with a subpoena,*  
10          *order, discovery request, or other judicial or administrative*  
11          *process with respect to any confidential supervisory infor-*  
12          *mation of a financial regulator concerning any person en-*  
13          *gaged in the business of conducting financial activities, the*  
14          *financial regulator may intervene in such action or pro-*  
15          *ceeding, and such person may intervene with such regu-*  
16          *lator, for the purpose of—*

17               (1) *enforcing the limitations established in para-*  
18               *graph (1) of subsections (b) and (e);*

19               (2) *seeking the withdrawal of any compulsory*  
20               *process with respect to such information; and*

21               (3) *registering appropriate objections with re-*  
22               *spect to the action or proceeding to the extent the ac-*  
23               *tion or proceeding relates to or involves such informa-*  
24               *tion.*



1       (g) *RIGHT TO APPEAL*.—Any court order that compels  
2   production of confidential supervisory information may be  
3   immediately appealed by the financial regulator and the  
4   order compelling production shall be automatically stayed,  
5   pending the outcome of such appeal.

6       (h) *REGULATIONS*.—

7           (1) *AUTHORITY TO PRESCRIBE*.—Each financial  
8   regulator may prescribe such regulations as the regu-  
9   lator considers to be appropriate, after consultation  
10   with the other financial regulators (to the extent the  
11   prescribing financial regulator considers appropriate  
12   and feasible), to carry out the purposes of this section.

13          (2) *AUTHORITY TO REQUIRE NOTICE*.—Any reg-  
14   ulations prescribed by a financial regulator under  
15   paragraph (1) may require any person in possession  
16   of confidential supervisory information to notify the  
17   financial regulator whenever the person is served with  
18   a subpoena, order, discovery request, or other judicial  
19   or administrative process requiring the personal at-  
20   tendance of such person as a witness or requiring the  
21   production of such information in any proceeding.

22       (i) *ABILITY TO PARTIALLY WAIVE PRIVILEGE WHERE*  
23   *NO OTHER PRIVILEGE APPLIES*.—A financial regulator  
24   may, to the extent permitted by applicable law governing  
25   the disclosure of information by the regulator, authorize a

1 *waiver of the privilege established by this section to allow*  
2 *access by a person to confidential supervisory information*  
3 *created by such regulator (or requested by such regulator*  
4 *from any person engaged in the business of conducting fi-*  
5 *nancial activities), except that—*

6 *(1) the regulator may place appropriate limits*  
7 *on the use and disclosure of the information shared,*  
8 *and may continue to assert the privilege with respect*  
9 *to any other person that seeks access to the informa-*  
10 *tion; and*

11 *(2) such waiver shall not affect any other privi-*  
12 *lege or confidentiality protection that any party may*  
13 *assert against any person other than such financial*  
14 *regulator.*

15 *(j) SHARING OF REPORTS.—*

16 *(1) IN GENERAL.—Subject to subsection (k), no*  
17 *provision of this section shall be construed as pre-*  
18 *venting a person engaged in the business of con-*  
19 *ducting financial activities from providing a report*  
20 *that is required by, or prepared at the request of, a*  
21 *financial regulator (the originating financial regu-*  
22 *lator) to another financial regulator that has the au-*  
23 *thority to obtain the information from the person*  
24 *under any other provision of law.*

1           (2) *PRIVILEGE PRESERVED.*—If a person pro-  
2       vides a report referred to in paragraph (1) to a fi-  
3       nancial regulator other than the originating financial  
4       regulator, such action shall not affect the ability of  
5       the originating financial regulator to assert any  
6       privilege that such financial regulator may claim  
7       with respect to the report against any person that is  
8       not a financial regulator.

9       (k) *REQUESTS FOR INFORMATION INVOLVING AN-*  
10    *OTHER FINANCIAL REGULATOR.*—

11           (1) *IN GENERAL.*—Before any financial regu-  
12       lator requests information from a person engaged in  
13       the business of conducting financial activities that is  
14       confidential supervisory information contained in a  
15       report that was created by another financial regu-  
16       lator, or that was derived from confidential super-  
17       visory information that was created by another finan-  
18       cial regulator, (hereafter in this subsection referred to  
19       as the “originating financial regulator”), the finan-  
20       cial regulator seeking such information (hereafter in  
21       this subsection referred to as the “requesting financial  
22       regulator”) shall first request such information di-  
23       rectly from the originating financial regulator.

24           (2) *NOTICE OF INTENT TO REQUEST INFORMA-*  
25       *TION FROM FINANCIAL INSTITUTION.*—If, pursuant to

1     *a request from a requesting financial regulator under*  
2     *paragraph (1), an originating financial regulator re-*  
3     *fuses to provide the information described in such*  
4     *paragraph, the requesting financial regulator may*  
5     *not request or compel the production of such informa-*  
6     *tion from a person engaged in the business of con-*  
7     *ducting financial activities unless the requesting fi-*  
8     *ancial regulator first provides notice of such regu-*  
9     *lator's intention (to make such request or compel such*  
10    *production) to the originating financial institution*  
11    *and provides the originating financial regulator with*  
12    *reasonable opportunity to respond.*

13           (3) *DECLARATORY JUDGMENT.*—*The opportunity*  
14    *to respond described in paragraph (2) shall include*  
15    *the right of the originating financial regulator to*  
16    *bring an action in the United States District Court*  
17    *for the District of Columbia for a declaratory judg-*  
18    *ment of the rights and privileges of the requesting and*  
19    *originating financial regulators with respect to the*  
20    *information described in paragraph (1), and such re-*  
21    *lief as may be appropriate.*

22           (4) *STANDARDS.*—*In any action brought under*  
23    *paragraph (3), the United States District Court for*  
24    *the District of Columbia shall decide the matter de*  
25    *novo based on applicable law, other than this title, in-*

1 *cluding any protections or privileges that would be*  
2 *available to the originating financial regulator if such*  
3 *regulator were to intervene in an action brought by*  
4 *the requesting financial regulator to compel the pro-*  
5 *duction of such information from the person engaged*  
6 *in the business of conducting financial activity re-*  
7 *ferred to in paragraph (1).*

8 (5) *PROHIBITION ON REQUESTING INFORMATION*  
9 *WHILE ACTION IS PENDING.*—While any action under  
10 *paragraph (3) is pending with respect to any infor-*  
11 *mation described in paragraph (1), the requesting fi-*  
12 *nancial regulator may not make any request for such*  
13 *information from any person engaged in the business*  
14 *of conducting financial activity.*

15 (6) *RULE OF CONSTRUCTION.*—No provision of  
16 *this subsection may be construed as creating any new*  
17 *authority for any financial regulator to request or*  
18 *compel the production of any information from any*  
19 *person engaged in the business of conducting finan-*  
20 *cial activities.*

21 (l) *NO WAIVER OF ANY PRIVILEGE OF ANY OTHER*  
22 *PARTY.*—No provision of this Act shall provide a financial  
23 *regulator with any new authority to disclose information*  
24 *in contravention of applicable law governing disclosure of*  
25 *information.*

1 **SEC. 112. CONFIDENTIALITY OF INFORMATION.**

2 (a) *IN GENERAL.*—

3 (1) *FINANCIAL REGULATORS.*—*Except as other-*  
4 *wise provided in this section or section 111, any re-*  
5 *quirement under Federal or State law regarding the*  
6 *privacy or confidentiality of any information or ma-*  
7 *terial in the possession of any participant, and any*  
8 *privilege arising under Federal or State law (includ-*  
9 *ing the rules of any Federal or State court) with re-*  
10 *spect to such information or material, shall continue*  
11 *to apply to such information or material after the in-*  
12 *formation or material has been disclosed through the*  
13 *network to another participant or, if subtitle B has*  
14 *taken effect, the Subcommittee.*

15 (2) *CERTAIN INSURANCE INFORMATION.*—*Except*  
16 *as otherwise provided in this section or section 111,*  
17 *any requirement under Federal or State law regard-*  
18 *ing the privacy or confidentiality of any information*  
19 *or material in the possession of the National Associa-*  
20 *tion of Insurance Commissioners, or any member or*  
21 *affiliate of the Association, and any privilege arising*  
22 *under Federal or State law (including the rules of*  
23 *any Federal or State court) with respect to such in-*  
24 *formation or material, shall continue to apply to such*  
25 *information or material after the information has*  
26 *been disclosed to the Association, or any other member*

1       or affiliate of the Association, through the computer  
2       databases maintained by the Association.

3               (3) *NONAPPLICABILITY OF CERTAIN REQUIRE-*  
4       *MENTS.—Information or material that is subject to a*  
5       *privilege or confidentiality under any other para-*  
6       *graph of this subsection shall not be subject to—*

7               (A) *disclosure under any Federal or State*  
8       *law governing the disclosure to the public of in-*  
9       *formation held by an officer or an agency of the*  
10       *Federal Government or the respective State; or*

11              (B) *subpoena or discovery, or admission*  
12       *into evidence, in any private civil action or ad-*  
13       *ministrative process,*

14       *unless with respect to any privilege held by a partici-*  
15       *part with respect to such information or material, the*  
16       *participant waives, in whole or in part, in the discre-*  
17       *tion of the participant, such privilege.*

18       (b) *PREEMPTION OF STATE LAW.—Any State law, in-*  
19       *cluding any State open record law, relating to the disclosure*  
20       *of confidential supervisory information or any information*  
21       *or material to which subsection (a) applies that is incon-*  
22       *sistent with any provision of section 111 or subsection (a)*  
23       *of this section shall be superseded by the requirements of*  
24       *such provision to the extent State law provides less con-*  
25       *fidentiality or a weaker privilege.*

1       (c) *DUTY OF FINANCIAL REGULATOR TO MAINTAIN*  
2 *CONFIDENTIALITY.*—A participant may not receive,  
3 download, copy, or otherwise maintain any information or  
4 material from any other member of or liaison to the Sub-  
5 committee through the network unless—

6           (1) the participant maintains a system that en-  
7 ables the participant to maintain full compliance  
8 with the requirements of sections 100, 102, and 111  
9 and this section, with respect to such information and  
10 material; and

11          (2) if and to the extent required by the guidelines  
12 established under sections 100 and 102, a record is  
13 maintained of each attempt to access such informa-  
14 tion and material, and the identity of the person  
15 making the attempt, in order to prevent evasions of  
16 such requirements.

17 **SEC. 113. LIABILITY PROVISIONS.**

18       (a) *NO LIABILITY FOR GOOD FAITH DISCLOSURES.*—  
19 Any financial regulator, and any officer or employee of any  
20 financial regulator, shall not be subject to any civil action  
21 or proceeding for monetary damages by reason of the good  
22 faith action or omission of any officer or employee, while  
23 acting within the scope of office or employment, relating  
24 to collecting, furnishing, or disseminating regulatory or su-  
25 pervisory information concerning persons engaged in the



1 *business of conducting financial activities, to or from an-*  
2 *other financial regulator, whether directly or through the*  
3 *network.*

4 (b) *CRIMINAL LIABILITY FOR INTENTIONAL UNLAWFUL*  
5 *DISCLOSURES.—*

6 (1) *IN GENERAL.—It shall be unlawful to will-*  
7 *fully disclose to any person any information con-*  
8 *cerning any person engaged in the business of con-*  
9 *ducting financial activities knowing the disclosure to*  
10 *be in violation of any provision of this title—*

11 (A) *requiring the confidentiality of such in-*  
12 *formation; or*

13 (B) *establishing a privilege from disclosure*  
14 *for such information that has not been waived by*  
15 *the relevant financial regulator.*

16 (2) *PENALTY.—Notwithstanding section 3571 of*  
17 *title 18, United States Code, any person who violates*  
18 *paragraph (1) shall be fined an amount not to exceed*  
19 *the greater of \$100,000 or the amount of the actual*  
20 *damages sustained by any person as a result of such*  
21 *violation, or imprisoned not more than 5 years, or*  
22 *both.*

23 (c) *FULL, CONTINUED PROTECTION UNDER THE SO-*  
24 *CALLED “FEDERAL TORT CLAIMS ACT”.—No provision of*  
25 *this Act shall be construed as reducing or limiting any pro-*

1 *tection provided for any Federal agency, or any officer or*  
 2 *employee of any Federal agency, under section 2679 of title*  
 3 *28, United States Code.*

4 *(d) PROTECTION APPLIED TO THE SUBCOMMITTEE.—*  
 5 *For the purposes of this section, the term “financial regu-*  
 6 *lator” includes the Subcommittee after subtitle B has taken*  
 7 *effect.*

8 **SEC. 114. AUTHORIZATION FOR IDENTIFICATION AND**  
 9 **CRIMINAL BACKGROUND CHECK.**

10 *(a) SHARING OF CRIMINAL RECORDS.—*

11 *(1) ATTORNEY GENERAL AUTHORIZATION.—*  
 12 *Upon receiving a request from a financial regulator,*  
 13 *the Attorney General shall—*

14 *(A) search the records of the Criminal Jus-*  
 15 *tice Information Services Division of the Federal*  
 16 *Bureau of Investigation, and any other similar*  
 17 *database over which the Attorney General has*  
 18 *authority and deems appropriate, for any crimi-*  
 19 *nal background records (including wanted per-*  
 20 *sons information) corresponding to the identi-*  
 21 *fication information provided under subsection*  
 22 *(b); and*

23 *(B) either—*

24 *(i) shall provide any such records to*  
 25 *any authorized agent of the financial regu-*

1            *lator, which shall provide the relevant infor-*  
2            *mation to such regulator; or*

3            *(ii) may provide such records directly*  
4            *to the financial regulator if the Attorney*  
5            *General limits such provision of records to*  
6            *relevant information.*

7            (2) *AUTHORIZED AGENT DEFINED.—For pur-*  
8            *poses of this section, the term “authorized agent”*  
9            *means—*

10            *(A) any agent which has been recognized by*  
11            *the Attorney General for such purpose and au-*  
12            *thorized by at least 3 other financial regulators*  
13            *to receive such records and perform the informa-*  
14            *tion sharing requirements of paragraph (3);*

15            *(B) the State attorney general for the State*  
16            *in which the regulator is primarily located, and*

17            *(C) any law enforcement designee of the At-*  
18            *torney General or such State attorney general.*

19            (3) *INFORMATION SHARED.—*

20            *(A) IN GENERAL.—The authorized agent*  
21            *shall provide to the requesting financial regu-*  
22            *lator only any records that are relevant informa-*  
23            *tion.*

1 (B) *RELEVANT INFORMATION DEFINED.*—

2 *For purposes of this section, the term “relevant*  
 3 *information” means any of the following records:*

4 (i) *All felony convictions.*

5 (ii) *All misdemeanor convictions*  
 6 *involving—*

7 (I) *violation of a law involving fi-*  
 8 *nancial activities;*

9 (II) *dishonesty or breach of trust,*  
 10 *within the meaning of section 1033 of*  
 11 *title 18, United States Code, including*  
 12 *taking, withholding, misappropriating,*  
 13 *or converting money or property;*

14 (III) *failure to comply with child*  
 15 *support obligations;*

16 (IV) *failure to pay taxes; and*

17 (V) *domestic violence, child abuse,*  
 18 *or a crime of violence.*

19 (C) *CRIME OF VIOLENCE DEFINED.*—*For*  
 20 *purposes of subparagraph (B)(ii)(V), the term*  
 21 *“crime of violence” means a burglary of a dwell-*  
 22 *ing and a criminal offense that has as an ele-*  
 23 *ment, the use or attempted use of physical force,*  
 24 *or threat of great bodily harm, or the use, at-*  
 25 *tempted use, or threatened use of a deadly weap-*

1        *on, against an individual, including committing*  
 2        *or attempting to commit murder, manslaughter,*  
 3        *kidnapping, aggravated assault, forcible sex of-*  
 4        *fenses, robbery, arson, extortion, and extortionate*  
 5        *extension of credit.*

6        (4) STATE UNIFORM OR RECIPROCITY LAWS RE-  
 7        QUIREMENT.—

8            (A) IN GENERAL.—*The Attorney General*  
 9        *may not provide any records under this sub-*  
 10       *section to an insurance regulator of a State, or*  
 11       *agent of such regulator, if such State does not*  
 12       *have in effect uniform or reciprocity laws and*  
 13       *regulations governing the licensure of individuals*  
 14       *and entities authorized to sell and solicit the*  
 15       *purchase of insurance within the State as set*  
 16       *forth in section 321 of P.L. 106-102.*

17          (B) DETERMINATION OF RECIPROCITY.—  
 18        *The determination of whether or not a State has*  
 19        *uniform or reciprocity laws or regulations in ef-*  
 20        *fect for purposes of subparagraph (A) shall be*  
 21        *made by the Attorney General, with the advice*  
 22        *and counsel of the National Association of Insur-*  
 23        *ance Commissioners.*

24          (C) EXCEPTION UNDER CERTAIN CIR-  
 25        CUMSTANCES.—*Notwithstanding subparagraph*

1           *(B), the Attorney General may provide records*  
2           *under this section to an insurance regulator of a*  
3           *State, or agent of such regulator, on the basis of*  
4           *a specific determination by the National Associa-*  
5           *tion of Insurance Commissioners that such State*  
6           *has in effect uniform or reciprocity laws and*  
7           *regulations referred to in subparagraph (A) if—*

8                     *(i) a determination by the Attorney*  
9                     *General under subparagraph (B) is pend-*  
10                    *ing; or*

11                    *(ii) the Attorney General considers*  
12                    *whether such State has in effect such uni-*  
13                    *form or reciprocity laws or regulations and*  
14                    *fails to make a determination, unless the*  
15                    *Attorney General subsequently determines*  
16                    *that such State does not have in effect uni-*  
17                    *form or reciprocity laws or regulations.*

18        ***(b) FORM OF REQUEST.***—*A request under subsection*  
19        ***(a)*** *shall include a copy of any necessary identification in-*  
20        *formation required by the Attorney General, such as the*  
21        *name and fingerprints of the person about whom the record*  
22        *is requested and a statement signed by the person acknowl-*  
23        *edging that the regulator (or such regulator's designated*  
24        *agent under subsection (g)(1)) may request the search.*

1       (c) *LIMITATION ON PERMISSIBLE USES OF INFORMA-*  
2 *TION.—Information obtained under this section may—*

3           (1) *be used only for regulatory or law enforce-*  
4 *ment purposes; and*

5           (2) *be disclosed—*

6               (A) *only to other financial regulators or*  
7 *Federal or State law enforcement agencies; and*

8               (B) *only if the recipient agrees to—*

9                   (i) *maintain the confidentiality of such*  
10 *information; and*

11                   (ii) *limit the use of such information*  
12 *to appropriate regulatory and law enforce-*  
13 *ment purposes.*

14       (d) *PENALTY FOR IMPROPER USE.—*

15           (1) *IN GENERAL.—Whoever uses any information*  
16 *obtained under this section knowingly and willfully*  
17 *for an unauthorized purpose shall be fined under title*  
18 *18, United States Code, imprisoned for not more than*  
19 *2 years, or both.*

20       (2) *ADDITIONAL PENALTIES AND WAIVERS.—*

21           (A) *IN GENERAL.—Any authorized agent*  
22 *who violates paragraph (1), or any individual*  
23 *who directs such agent to violate such para-*  
24 *graph, shall be barred from engaging in or regu-*

1           *lating any activities related to the business of in-*  
2           *surance.*

3                   (B) *WAIVER AUTHORIZED.—The Attorney*  
4           *General, in the discretion of the Attorney Gen-*  
5           *eral, may waive the bar in subparagraph (A), as*  
6           *appropriate.*

7           (e) *RELIANCE ON INFORMATION.—A financial regu-*  
8           *lator (or such regulator’s designated agent under subsection*  
9           *(g)(1)) who reasonably relies on information provided*  
10          *under this section shall not be liable in any action for using*  
11          *information as permitted under this section in good faith.*

12          (f) *CLARIFICATION OF SECTION 1033.—With respect to*  
13          *any action brought under section 1033(e)(1)(B) of title 18,*  
14          *United States Code, no person engaged in the business of*  
15          *conducting financial activities shall be subject to any pen-*  
16          *alty resulting from such section if the individual who the*  
17          *person permitted to engage in the business of insurance is*  
18          *licensed, or approved (as part of an application or other-*  
19          *wise), by a State insurance regulator that performs crimi-*  
20          *nal background checks under this section, unless such person*  
21          *knows that the individual is in violation of section*  
22          *1033(e)(1)(A) of such title.*

23          (g) *DESIGNATION OF AGENT.—*

24                   (1) *IN GENERAL.—A financial regulator may*  
25          *designate an agent for facilitating requests and ex-*



1 *changes of information under this section between or*  
2 *among the financial regulator, the Attorney General,*  
3 *and any other authorized agent.*

4 (2) *SENSE OF CONGRESS REGARDING AGENTS OF*  
5 *INSURANCE REGULATORS.—It is the sense of the Con-*  
6 *gress that—*

7 (A) *each State insurance commissioner*  
8 *should designate the National Association of In-*  
9 *surance Commissioners as an agent under para-*  
10 *graph (1);*

11 (B) *persons engaged in the business of in-*  
12 *surance should be able to use the National Asso-*  
13 *ciation of Insurance Commissioners to facilitate*  
14 *obtaining fingerprints and supplying identifica-*  
15 *tion information for use in background checks*  
16 *under this section on a multijurisdictional basis;*

17 (C) *the National Association of Insurance*  
18 *Commissioners should maintain a database to*  
19 *obtain records under this section for use by State*  
20 *insurance commissioners to reduce multiple or*  
21 *duplicative fingerprinting requirements and*  
22 *criminal background checks, except that any such*  
23 *record shall not be maintained for more than 1*  
24 *year without performing a new background check*

1           to determine if the criminal background record  
2           has changed;

3                 (D) other financial regulators that require  
4           fingerprints and criminal background checks  
5           should similarly coordinate efforts to reduce du-  
6           plication for persons engaged in the business of  
7           conducting multiple types of financial activities;  
8           and

9                 (E) the National Association of Insurance  
10          Commissioners, and other financial regulators  
11          that use this section, should consult with the At-  
12          torney General to consider the feasibility of de-  
13          veloping an on-going notification system that  
14          would allow the Attorney General to notify such  
15          Association when a licensed or approved insur-  
16          ance professional is convicted of a relevant  
17          crime.

18          (h) FEES.—The Attorney General may charge a rea-  
19          sonable fee for the provision of information under this sec-  
20          tion.

21          (i) RULE OF CONSTRUCTION.—This section shall not—

22                 (1) provide independent authorization for a fi-  
23          nancial regulator to require fingerprinting as a part  
24          of a licensure or other application;

1           (2) *require a financial regulator to perform*  
2           *criminal background checks under this section; or*

3           (3) *supersede or otherwise limit any other au-*  
4           *thority that allows access to criminal background*  
5           *records.*

6           (j) *REGULATIONS.—The Attorney General may pre-*  
7           *scribe regulations to carry out this section.*

8   **SEC. 115. DEFINITIONS.**

9           *For purposes of this title, the following definitions*  
10          *shall apply:*

11           (1) *FEDERAL BANKING AGENCY.—The term*  
12           *“Federal banking agency” has the same meaning as*  
13           *given in section 3(z) of the Federal Deposit Insurance*  
14           *Act.*

15           (2) *FINANCIAL ACTIVITIES.—*

16           (A) *IN GENERAL.—The term “financial*  
17           *activities”—*

18                   (i) *means banking activities (including*  
19                   *the ownership of a bank), securities activi-*  
20                   *ties, insurance activities, or commodities*  
21                   *activities; and*

22                   (ii) *includes all activities that are fi-*  
23                   *nancial in nature or are incidental to a fi-*  
24                   *nancial activity (as defined under section*

1                   4(k) of the Bank Holding Company Act of  
2                   1956).

3                   (B) *RULE OF CONSTRUCTION.*—Subpara-  
4                   graph (A) shall not be construed as creating any  
5                   inference, including any negative inference, con-  
6                   cerning the types or extent of activities that are  
7                   appropriately recognized as activities that are fi-  
8                   nancial in nature, or are incidental to a finan-  
9                   cial activity, for purposes of section 4 of the  
10                  Bank Holding Company Act of 1956.

11                  (3) *FINANCIAL REGULATOR.*—The term “finan-  
12                  cial regulator” means—

13                         (A) each Federal banking agency;

14                         (B) the Securities and Exchange Commis-  
15                         sion;

16                         (C) the Commodity Futures Trading Com-  
17                         mission;

18                         (D) the National Credit Union Administra-  
19                         tion;

20                         (E) the Farm Credit Administration;

21                         (F) the Federal Housing Finance Board;

22                         (G) the Federal Trade Commission, to the  
23                         extent the Commission has jurisdiction over fi-  
24                         nancial activities being conducted by a person

1       *engaged in the business of conducting financial*  
2       *activities;*

3               *(H) the Secretary of the Treasury, to the ex-*  
4       *tent the Secretary has jurisdiction over financial*  
5       *activities being conducted by a person engaged*  
6       *in the business of conducting financial activities*

7               *(I) the Office of Federal Housing Enterprise*  
8       *Oversight of the Department of Housing and*  
9       *Urban Development;*

10              *(J) the Appraisal Subcommittee of the Fi-*  
11       *nancial Institutions Examination Council;*

12              *(K) any State bank supervisor (as defined*  
13       *in section 3(r) of the Federal Deposit Insurance*  
14       *Act), including the Conference of State Bank Su-*  
15       *pervisors only to the extent such conference is*  
16       *acting as an agent of, and is subject to the over-*  
17       *sight of, any such State bank supervisor;*

18              *(L) any State savings association super-*  
19       *visor, including the American Council of State*  
20       *Savings Supervisors only to the extent such con-*  
21       *ference is acting as an agent of, and is subject*  
22       *to the oversight of, any such State savings asso-*  
23       *ciation supervisor;*

24              *(M) any State insurance commissioner, in-*  
25       *cluding the National Association of Insurance*

1       Commissioners only to the extent such associa-  
2       tion is acting as the agent of, and is subject to  
3       the oversight of, any such insurance commis-  
4       sioner;

5               (N) any State securities administrator, in-  
6       cluding the North American Securities Adminis-  
7       trators Association only to the extent such asso-  
8       ciation is acting as the agent of, and is subject  
9       to the oversight of, any such securities adminis-  
10      trator;

11              (O) any State credit union supervisor, in-  
12      cluding the National Association of State Credit  
13      Union Supervisors only to the extent such asso-  
14      ciation is acting as the agent of, and is subject  
15      to the oversight of, any such credit union super-  
16      visor;

17              (P) the National Association of Securities  
18      Dealers, only to the extent that—

19                      (i) such association is acting in con-  
20                      nection with the financial services industry;  
21                      and

22                      (ii) the association and the relevant ac-  
23                      tions are subject to the oversight of the Secu-  
24                      rities and Exchange Commission;

1           (Q) *the National Futures Association, only*  
2           *to the extent that—*

3                   (i) *such association is acting in con-*  
4                   *nection with the financial services industry;*  
5                   *and*

6                   (ii) *the association and the relevant ac-*  
7                   *tions are subject to the oversight of the Com-*  
8                   *modity Futures Trading Commission or the*  
9                   *Securities and Exchange Commission; and*

10           (R) *any other self-regulatory organization*  
11           *that engages in or coordinates regulatory and su-*  
12           *pervisory activities, with respect to any person*  
13           *engaged in the business of conducting financial*  
14           *activities, and is subject to the oversight of the*  
15           *Securities and Exchange Commission or the*  
16           *Commodity Futures Trading Commission, but*  
17           *only to the extent that the organization engages*  
18           *in such activities and is subject to such oversight.*

19           (4) *FOREIGN FINANCIAL REGULATOR.—The term*  
20           *“foreign financial regulator” means any agency, enti-*  
21           *ty, or body (including a self-regulatory organization)*  
22           *that is empowered by the laws of a foreign country*  
23           *to supervise and regulate persons engaged in the busi-*  
24           *ness of conducting financial activities, but only to the*  
25           *extent of such supervisory and regulatory activities.*

1           (5) *PARTICIPANT.*—*The term “participant”*  
2           *means any entity described in section 101 as being*  
3           *represented by a member of, or a liaison to, the Sub-*  
4           *committee (regardless of whether subtitle B has taken*  
5           *effect) but only to the extent the regulator provides or*  
6           *obtains access to information through the network.*

7           (6) *PERSON.*—*The term “person” includes any*  
8           *financial regulator.*

9           (7) *PERSON ENGAGED IN THE BUSINESS OF CON-*  
10          *DUCTING FINANCIAL ACTIVITIES.*—*The term “person*  
11          *engaged in the business of conducting financial ac-*  
12          *tivities” includes, to the extent appropriate under the*  
13          *laws applicable to the jurisdiction of a financial regu-*  
14          *lator over such person—*

15                (A) *any director, officer, employee, or con-*  
16                *trolling stockholder of, or agent for, any such*  
17                *person;*

18                (B) *any other person who has filed or is re-*  
19                *quired to file a change-in-control notice with the*  
20                *appropriate financial regulator before acquiring*  
21                *control of such person; and*

22                (C) *any person who has sought approval*  
23                *from a financial regulator to engage in the busi-*  
24                *ness of conducting financial activities, or that*



1           *was engaged in such business and subject to the*  
2           *jurisdiction of a financial regulator; and*

3                     *(D) any shareholder, consultant, joint ven-*  
4           *ture partner, and any other person, including an*  
5           *independent contractor, as determined by the ap-*  
6           *propriate financial regulator (by regulation or*  
7           *case-by-case) who participates in the conduct of*  
8           *the affairs of such person.*

9           (8) *STATE INSURANCE COMMISSIONER.*—*The*  
10          *term “State insurance commissioner” means any offi-*  
11          *cer, agency, or other entity of any State which has*  
12          *primary regulatory authority over the business of in-*  
13          *surance and over any person engaged in the business*  
14          *of insurance to the extent of such activities, in such*  
15          *State.*

16          (9) *STATE SECURITIES ADMINISTRATOR.*—*The*  
17          *term “State securities administrator” means the secu-*  
18          *rities commission (or any agency or office performing*  
19          *like functions) of any State.*

20 **SEC. 116. TECHNICAL AND CONFORMING AMENDMENTS TO**  
21 **OTHER ACTS.**

22          (a) *Subsection (b) of section 552a of title 5, United*  
23          *States Code, is amended—*

24                     (1) *by striking “and” at the end of paragraph*  
25                     (11);

1           (2) *by striking the period at the end of para-*  
2 *graph (12) and inserting “; or”; and*

3           (3) *by inserting after paragraph (12) the fol-*  
4 *lowing new paragraph:*

5           “(13) *for recordkeeping, licensing, and other reg-*  
6 *ulatory and law enforcement purposes in accordance*  
7 *with title I of the Financial Services Antifraud Net-*  
8 *work Act of 2001—*

9           “(A) *through a network or name-relation-*  
10 *ship index maintained under such title; or*

11           “(B) *to a multistate database maintained*  
12 *by the National Association of Insurance Com-*  
13 *missioners and any subsidiary or affiliate of*  
14 *such association, subject to the requirements of*  
15 *such title.”.*

16       (b) *Section 1113 of the Financial Institutions Regu-*  
17 *latory and Interest Rate Control Act of 1978 (12 U.S.C.*  
18 *3413) is amended by adding at the end the following new*  
19 *subsection:*

20       “(r) *This title shall not apply to disclosure by a finan-*  
21 *cial regulator of information pursuant to subtitle A or B*  
22 *of the Financial Services Antifraud Network Act of 2001*  
23 *to the extent the disclosure is made in accordance with the*  
24 *requirements of such Act.”.*

1       (c) *Section 602 of the Consumer Credit Protection Act*  
2   *(15 U.S.C. 1681) is amended by adding at the end the fol-*  
3   *lowing new subsection:*

4       “(c) *This title shall not apply to a communication be-*  
5   *tween participants, as defined in the Financial Services*  
6   *Antifraud Network Act of 2001, to the extent the commu-*  
7   *nication is made in accordance with such Act.”.*

8   **SEC. 117. AUDIT OF STATE INSURANCE REGULATORS.**

9       (a) *IN GENERAL.*—*At the request of the Congress, the*  
10   *Comptroller General shall audit a State insurance regulator*  
11   *or any person who maintains information on behalf of such*  
12   *regulator.*

13       (b) *LIMITATIONS ON DISCLOSURE OF INFORMATION.*—  
14   *Except as provided in this subsection, an officer or employee*  
15   *of the General Accounting Office may not disclose informa-*  
16   *tion identifying an open insurance company or a customer*  
17   *of an open or closed insurance company. The Comptroller*  
18   *General may disclose information related to the affairs of*  
19   *a closed insurance company only if the Comptroller General*  
20   *believes the customer had a controlling influence in the*  
21   *management of the closed insurance company or was re-*  
22   *lated to or affiliated with a person or group having a con-*  
23   *trolling influence.*

24       (c) *COORDINATION WITH STATE REGULATOR.*—*An of-*  
25   *ficer or employee of the Office may discuss a customer or*

1 *insurance company with an official of a State insurance*  
2 *regulator and may report an apparent criminal violation*  
3 *to an appropriate law enforcement authority of the United*  
4 *States Government or a State.*

5 (d) CONGRESSIONAL OVERSIGHT.—*This subsection*  
6 *shall not be construed as authorizing an officer or employee*  
7 *of a State insurance regulator to withhold information from*  
8 *a committee of the Congress authorized to have the informa-*  
9 *tion.*

10 (e) ADMINISTRATIVE ASPECTS OF AUDIT.—

11 (1) IN GENERAL.—*To carry out this section, all*  
12 *records and property of or used by a State insurance*  
13 *regulator, including samples of reports of examina-*  
14 *tions of an insurance company the Comptroller Gen-*  
15 *eral considers statistically meaningful and*  
16 *workpapers and correspondence related to the reports*  
17 *shall be made available to the Comptroller General.*  
18 *The Comptroller General shall give a State insurance*  
19 *regulator a current list of officers and employees to*  
20 *whom, with proper identification, records and prop-*  
21 *erty may be made available, and who may make*  
22 *notes or copies necessary to carry out an audit.*

23 (2) PREVENTION OF UNAUTHORIZED ACCESS.—  
24 *The Comptroller General shall prevent unauthorized*  
25 *access to records or property of or used by a State in-*

1        *surance regulator that the Comptroller General ob-*  
2        *tains during an audit.*

3        *(f) CONFIDENTIALITY.—*

4                *(1) IN GENERAL.—The Comptroller General shall*  
5        *maintain the same level of confidentiality for a record*  
6        *made available under this section as is required of the*  
7        *head of the State insurance regulator from which it*  
8        *is obtained.*

9                *(2) PREVENTION OF INVASION OF PERSONAL PRI-*  
10        *VACY.—The Comptroller General shall keep informa-*  
11        *tion described in section 552(b)(6) of title 5, United*  
12        *States Code, that the Comptroller General obtains in*  
13        *a way that prevents unwarranted invasions of per-*  
14        *sonal privacy.*

15                *(3) AVAILABILITY OF INFORMATION.—Except as*  
16        *provided in subsection (b), no provision of this section*  
17        *shall be construed as authorizing any information to*  
18        *be withheld from the Congress.*

19        *(g) AVAILABILITY OF INFORMATION AND INSPECTION*  
20        *OF RECORDS.—The right of access of the Comptroller Gen-*  
21        *eral to information under this section shall be enforceable*  
22        *under section 716 of title 31, United States Code.*

23        *(h) DEFINITIONS.—For purposes of this section, the*  
24        *following definitions shall apply:*

1           (1) *STATE INSURANCE REGULATOR DEFINED.*—  
 2       *The term “State insurance regulator” means the*  
 3       *principal insurance regulatory authority of a State,*  
 4       *the District of Columbia, any territory of the United*  
 5       *States, Puerto Rico, Guam, American Samoa, the*  
 6       *Trust Territory of the Pacific Islands, the Virgin Is-*  
 7       *lands, and the Northern Mariana Islands.*

8           (2) *INSURANCE COMPANY.*—*The term “insurance*  
 9       *company” includes any person engaged in the busi-*  
 10       *ness of insurance to the extent of such activities.*

11       ***TITLE II—SECURITIES INDUSTRY***  
 12               ***COORDINATION***  
 13               ***Subtitle A—Disciplinary***  
 14               ***Information***

15       ***SEC. 201. INVESTMENT ADVISERS ACT OF 1940.***

16       *Section 204 of the Investment Advisers Act of 1940 (15*  
 17       *U.S.C. 80b-4) is amended—*

18           (1) *by striking “Every investment” and insert-*  
 19       *ing the following:*

20           “(a) *IN GENERAL.*—*Every investment*”; and

21           (2) *by adding at the end the following:*

22           “(b) *FILING DEPOSITORIES.*—*The Commission, by*  
 23       *rule, may require an investment adviser—*

24           “(1) *to file with the Commission any fee, appli-*  
 25       *cation, report, or notice required to be filed by this*

1     *title or the rules issued under this title through any*  
2     *entity designated by the Commission for that purpose;*  
3     *and*

4             “(2) *to pay the reasonable costs associated with*  
5     *such filing and the establishment and maintenance of*  
6     *the systems required by subsection (c).*

7             “(c) *ACCESS TO DISCIPLINARY AND OTHER INFORMA-*  
8     *TION.—*

9             “(1) *MAINTENANCE OF SYSTEM TO RESPOND TO*  
10    *INQUIRIES.—The Commission shall require the entity*  
11    *designated by the Commission under subsection*  
12    *(b)(1)—*

13             “(A) *to establish and maintain a toll-free*  
14    *telephone listing or other readily accessible elec-*  
15    *tronic process to receive inquiries regarding dis-*  
16    *ciplinary actions and proceedings and other in-*  
17    *formation involving investment advisers and*  
18    *persons associated with investment advisers; and*

19             “(B) *to respond promptly to such inquiries.*

20             “(2) *RECOVERY OF COSTS.—An entity des-*  
21    *ignated by the Commission under subsection (b)(1)*  
22    *may charge persons, other than individual investors,*  
23    *reasonable fees for responses to inquiries made under*  
24    *paragraph (1).*

1           “(3) *LIMITATION ON LIABILITY.*—*An entity des-*  
2           *ignated by the Commission under subsection (b)(1)*  
3           *shall not have any liability to any person for any ac-*  
4           *tions taken or omitted in good faith under this sub-*  
5           *section.*”.

6   **SEC. 202. SECURITIES EXCHANGE ACT OF 1934.**

7           *Subsection (i) of section 15A of the Securities Ex-*  
8           *change Act of 1934 (15 U.S.C. 78o–3) is amended to read*  
9           *as follows:*

10          “(i) *OBLIGATION TO MAINTAIN DISCIPLINARY AND*  
11          *OTHER DATA.*—

12               “(1) *MAINTENANCE OF SYSTEM TO RESPOND TO*  
13               *INQUIRIES.*—*A registered securities association*  
14               *shall—*

15                       “(A) *establish and maintain a toll-free tele-*  
16                       *phone listing or other readily accessible elec-*  
17                       *tronic process to receive inquiries regarding dis-*  
18                       *ciplinary actions and proceedings and other in-*  
19                       *formation involving its members and their asso-*  
20                       *ciated persons and regarding disciplinary ac-*  
21                       *tions and proceedings and other information*  
22                       *that has been reported to the Central Registra-*  
23                       *tion Depository by any registered national secu-*  
24                       *rities exchange involving its members and their*  
25                       *associated persons; and*



1 “(B) promptly respond to such inquiries.

2 “(2) *RECOVERY OF COSTS.*—Such association  
3 may charge persons, other than individual investors,  
4 reasonable fees for responses to such inquiries.

5 “(3) *LIMITATION ON LIABILITY.*—Such an asso-  
6 ciation or exchange shall not have any liability to  
7 any person for any actions taken or omitted in good  
8 faith under this subsection.”.

9 ***Subtitle B—Preventing Migration of***  
10 ***Rogue Financial Professionals***  
11 ***to the Securities Industry***

12 ***SEC. 211. SECURITIES EXCHANGE ACT OF 1934.***

13 (a) *BROKERS AND DEALERS.*—Section 15(b) of the Se-  
14 curities Exchange Act of 1934 (15 U.S.C. 78o(b)) is  
15 amended—

16 (1) in paragraph (4), by striking subparagraphs  
17 (F) and (G) and inserting the following:

18 “(F) is subject to any order of the Commission  
19 barring or suspending the right of the person to be as-  
20 sociated with a broker or dealer.

21 “(G) has been found by a foreign financial regu-  
22 latory authority to have—

23 “(i) made or caused to be made in any ap-  
24 plication for registration or report required to be  
25 filed with a foreign financial regulatory author-

1        *ity, or in any proceeding before a foreign finan-*  
2        *cial regulatory authority with respect to reg-*  
3        *istration, any statement that was at the time*  
4        *and in the light of the circumstances under*  
5        *which it was made false or misleading with re-*  
6        *spect to any material fact, or omitted to state in*  
7        *any such application, report, or proceeding any*  
8        *material fact that is required to be stated there-*  
9        *in;*

10        *“(ii) violated any foreign statute or regula-*  
11        *tion regarding securities, banking, thrift activi-*  
12        *ties, credit union activities, insurance, or con-*  
13        *tracts of sale of a commodity for future delivery,*  
14        *traded on or subject to the rules of a contract*  
15        *market or any board of trade; or*

16        *“(iii) aided, abetted, counseled, commanded,*  
17        *induced, or procured the violation by any other*  
18        *person of any provision of any statutory provi-*  
19        *sions enacted by a foreign government, or rules*  
20        *or regulations thereunder, regarding securities,*  
21        *banking, thrift activities, credit union activities,*  
22        *insurance, or contracts of sale of a commodity*  
23        *for future delivery traded on or subject to the*  
24        *rules of a contract market or any board of trade,*  
25        *or to have failed reasonably to supervise, with a*

1           *view to preventing violations of such statutory*  
 2           *provisions, rules, and regulations, another person*  
 3           *who commits such a violation, if such other per-*  
 4           *son is subject to his supervision.*

5           *“(H) is subject to any final order of a State se-*  
 6           *curities commission (or any agency or officer per-*  
 7           *forming like functions), State authority that super-*  
 8           *vises or examines banks, thrifts, or credit unions,*  
 9           *State insurance commission (or any agency or office*  
 10           *performing like functions), an appropriate Federal*  
 11           *banking agency (as defined in section 3 of the Federal*  
 12           *Deposit Insurance Act (12 U.S.C. 1813(q)), or the*  
 13           *National Credit Union Administration, that—*

14           *“(i) bars such person from association with*  
 15           *an entity regulated by such commission, author-*  
 16           *ity, agency, or officer, or from engaging in the*  
 17           *business of securities, insurance, banking, thrift*  
 18           *activities, or credit union activities; or*

19           *“(ii) constitutes a final order based on vio-*  
 20           *lations of any laws or regulations that prohibit*  
 21           *fraudulent, manipulative, or deceptive conduct.”;*  
 22           *and*

23           *(2) in paragraph (6)(A)(i), by striking “or omis-*  
 24           *sion enumerated in subparagraph (A), (D), (E), or*  
 25           *(G)” and inserting “; or is subject to an order or*

1     *finding, enumerated in subparagraph (A), (D), (E),*  
 2     *(G), or (H)”.*

3     (b) *MUNICIPAL SECURITIES BROKERS AND DEAL-*  
 4     *ERS.—Section 15B(c) of the Securities Exchange Act of*  
 5     *1934 (15 U.S.C. 78o–4(c)) is amended—*

6             *(1) in paragraph (2)—*

7                     *(A) by striking “or omission enumerated in*  
 8                     *subparagraph (A), (D), (E), or (G)” and insert-*  
 9                     *ing “, or is subject to an order or finding, enu-*  
 10                     *merated in subparagraph (A), (D), (E), (G), or*  
 11                     *(H)”;* *and*

12                     *(B) by striking “ten” and inserting “10”;*  
 13                     *and*

14                     *(2) in paragraph (4) by striking “or omission*  
 15                     *enumerated in subparagraph (A), (D), (E), or (G)”*  
 16                     *and inserting “, or is subject to an order or finding,*  
 17                     *enumerated in subparagraph (A), (D), (E), (G), or*  
 18                     *(H)”.*

19     (c) *GOVERNMENT SECURITIES BROKERS AND DEAL-*  
 20     *ERS.—Section 15C(c)(1) of the Securities Exchange Act of*  
 21     *1934 (15 U.S.C. 78o–5(c)(1)) is amended—*

22             *(1) in subparagraph (A), by striking “or omis-*  
 23             *sion enumerated in subparagraph (A), (D), (E), or*  
 24             *(G)” and inserting “, or is subject to an order or*

1     *finding, enumerated in subparagraph (A), (D), (E),*  
 2     *(G), or (H)”; and*

3             *(2) in subparagraph (C), by striking “or omis-*  
 4     *sion enumerated in subparagraph (A), (D), (E), or*  
 5     *(G)” and inserting “, or is subject to an order or*  
 6     *finding, enumerated in subparagraph (A), (D), (E),*  
 7     *(G), or (H)”.*

8     *(d) CLEARANCE AND SETTLEMENT.—Section 17A(c) of*  
 9     *the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c))*  
 10    *is amended—*

11             *(1) in paragraph (3)(A), by striking “enumer-*  
 12     *ated in subparagraph (A), (D), (E), or (G)” and in-*  
 13     *serting “, or is subject to an order or finding, enu-*  
 14     *merated in subparagraph (A), (D), (E), (G), or (H)”; and*  
 15     *and*

16             *(2) in paragraph (4)(C)—*

17                 *(A) by striking “enumerated in subpara-*  
 18     *graph (A), (D), (E), or (G)” and inserting “, or*  
 19     *is subject to an order or finding, enumerated in*  
 20     *subparagraph (A), (D), (E), (G), or (H)”; and*

21                 *(B) by striking “ten years” and inserting*  
 22     *“10 years”.*

23     *(e) DEFINITION OF STATUTORY DISQUALIFICATION.—*  
 24     *Section 3(a)(39)(F) of the Securities Exchange Act of 1934*  
 25     *(15 U.S.C. 78c(a)(39)(F)) is amended by striking “has com-*

1 *mitted or omitted any act enumerated in subparagraph*  
 2 *(D), (E), or (G)” and inserting “has committed or omitted*  
 3 *any act, or is subject to an order or finding, enumerated*  
 4 *in subparagraph (D), (E), (G), or (H)”.*

5 **SEC. 212. INVESTMENT ADVISERS ACT OF 1940.**

6 *(a) AUTHORITY TO DENY OR REVOKE REGISTRATION*  
 7 *BASED ON STATE (AND OTHER GOVERNMENTAL) ADMINIS-*  
 8 *TRATIVE ACTIONS.—Section 203(e) of the Investment Advis-*  
 9 *ers Act of 1940 (15 U.S.C. 80b–3(e)) is amended by striking*  
 10 *paragraphs (7) and (8) and inserting the following:*

11 *“(7) is subject to any order of the Commission*  
 12 *barring or suspending the right of the person to be as-*  
 13 *sociated with an investment adviser.*

14 *“(8) has been found by a foreign financial regu-*  
 15 *latory authority to have—*

16 *“(A) made or caused to be made in any ap-*  
 17 *plication for registration or report required to be*  
 18 *filed with a foreign securities authority, or in*  
 19 *any proceeding before a foreign securities author-*  
 20 *ity with respect to registration, any statement*  
 21 *that was at the time and in light of the cir-*  
 22 *cumstances under which it was made false or*  
 23 *misleading with respect to any material fact, or*  
 24 *has omitted to state in any such application, re-*

1           *port, or proceeding any material fact that is re-*  
2           *quired to be stated therein;*

3           “(B) *violated any foreign statute or regula-*  
4           *tion regarding securities, banking, thrift activi-*  
5           *ties, credit union activities, insurance, or con-*  
6           *tracts of sale of a commodity for future delivery*  
7           *traded on or subject to the rules of a contract*  
8           *market or any board of trade;*

9           “(C) *aided, abetted, counseled, commanded,*  
10          *induced, or procured the violation by any other*  
11          *person of any foreign statute or regulation re-*  
12          *garding securities, banking, thrift activities,*  
13          *credit union activities, insurance, or contracts of*  
14          *sale of a commodity for future delivery traded on*  
15          *or subject to the rules of a contract market or*  
16          *any board of trade, or to have failed reasonably*  
17          *to supervise, with a view to preventing violations*  
18          *of statutory provisions, and rules and regula-*  
19          *tions promulgated thereunder, another person*  
20          *who commits such a violation, if such other per-*  
21          *son is subject to his supervision.*

22          “(9) *is subject to any final order of a State secu-*  
23          *rities commission (or any agency or officer per-*  
24          *forming like functions), State authority that super-*  
25          *vises or examines banks, thrifts, or credit unions,*

1     *State insurance commission (or any agency or office*  
 2     *performing like functions), an appropriate Federal*  
 3     *banking agency (as defined in section 3 of the Federal*  
 4     *Deposit Insurance Act (12 U.S.C. 1813(q)), or the*  
 5     *National Credit Union Administration, that—*

6             *“(A) bars such person from association with*  
 7             *an entity regulated by such commission, author-*  
 8             *ity, agency, or officer, or from engaging in the*  
 9             *business of securities, insurance, banking, thrift*  
 10            *activities, or credit union activities; or*

11            *“(B) constitutes a final order based on vio-*  
 12            *lations of any laws or regulations that prohibit*  
 13            *fraudulent, manipulative, or deceptive conduct.”.*

14     **(b) BARS ON FELONS ASSOCIATED WITH INVESTMENT**  
 15     **ADVISERS.—Section 203(f) of the Investment Advisers Act**  
 16     **of 1940 (15 U.S.C. 80b–3(f)) is amended—**

17             **(A) by striking “or (8)” and inserting “(8),**  
 18             **or (9)”;** and

19             **(B) by inserting “or (3)” after “paragraph**  
 20             **(2)”.**

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. I recognize myself for 5 minutes.

The version of H.R. 1408 before you was adopted by the Committee on Financial Services by voice vote on June 27th of this



year, and the Committee on the Judiciary has received a sequential referral of sections 100, 101, 102, 105, 111, 113, and 114, which will expire this Friday. In general, this referral contains sections of H.R. 1408 that deal with the Federal courts or law enforcement agencies.

The bill requires financial regulators to formulate and implement an information sharing network. If the regulators fail to do so, a subcommittee will be formed by representatives of each financial services industry to formulate and implement a similar network.

When Congress recently adopted the Gramm-Leach-Bliley bill requiring regulators to modernize the regulation of the financial services industry, H.R. 1408 will give financial regulators the tools to complete the task. Currently our country loses in excess of \$100 billion each year from financial services fraud. H.R. 1408 will help regulators prevent these losses, which will ultimately benefit American consumers and businesses.

Also, the bill creates a national standard for confidential information sharing among financial services industries. This will help Federal, State, and local law enforcement networks track or even root out the bad actors that burrow into our financial institutions. Currently regulators share all sorts of information on an ad hoc basis, with varying safeguards. While many in the industry already maintain industry-specific databases, it only makes sense to coordinate this information and create a seamless regulatory system, which is what the bill does.

I would at this time ask unanimous consent that all Members may include opening statements at this point in the record, and will specifically recognize Messrs. Conyers and Bachus, who is the Chairman of the Subcommittee on Financial Services that put this bill together in the other Committee, when they come in.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MICHIGAN

First, I would like to thank Chairman Sensenbrenner for taking up this legislation, thereby preserving the Committee's jurisdiction on this issue.

H.R. 1408, the "Financial Services Antifraud Network Act of 2001" is the result of a bipartisan effort on the Financial Services Committee, led by our colleagues, Representatives Waters and Bachus. I support its passage in this Committee.

The bill directs financial regulators to coordinate their computer systems to facilitate the sharing of appropriate antifraud information. The purpose of this is to help enable the regulators to prevent fraud artists from moving from one sector of the financial services industry to another, detect fraud patterns early on, and to streamline their antifraud efforts.

H.R. 1408 does not require the creation of any new databases. Rather, it helps to network existing systems so they can easily communicate with each other.

*Importantly, the direction to coordinate information is limited to data on financial companies and professionals—not consumers.*

The bill involves the Attorney General and the Department of Justice in the anti-fraud effort. Under the bill, DOJ provides relevant criminal background records to the regulators, and this information must be maintained according to a strict confidentiality protocol.

I understand that there will be an amendment offered to modify the removal provisions of the bill and provide for a declaratory judgment to resolve questions involving confidential supervisory information. I support this common-sense change.

I encourage a "yes" vote on H.R. 1408.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Thank you Chairman Sensenbrenner and Ranking Member Conyers for holding this Judiciary Committee markup today.

The bill before us today, HR 1408, represents a delicate bi-partisan compromise between members of the House Financial Services Committee. The bill would effectively direct financial regulators to coordinate their computer systems to facilitate the sharing of appropriate antifraud information. Currently, Federal and State financial regulators and self-regulating financial organizations each use a different system, thus complicating the sharing of information to keep track of each other's antifraud efforts. HR 1408 would coordinate regulators' computer protocols so that their systems can communicate and share critical antifraud information on a comprehensive basis. Importantly, HR 1408 would not create any new database or collecting mechanism, but would instead utilize existing systems to better facilitate the responsible sharing of vital information.

Despite the delicate compromise, the Department of Justice has indicated several concerns that may be raised today. First, section 111(b) of HR 1408, could be clarified to reflect that law enforcement is not precluded from accessing confidential supervisory information. This can be done by adding a new subparagraph 111(b)(2)(A)(iii), which would state that "No provision of paragraph (1) shall be construed as preventing access to confidential supervisory information by law enforcement agencies."

Next, section 114(f), could be stricken because the term "knows", which may be inconsistent with the term "willfully" in 18 USC 1033(e)(1)(B), could create confusion in prosecutions concerning the burden of proof to be put forth by the government.

Finally, subparagraph 114(g)(2)(C) might be stricken because the database that the National Association of Insurance Commissioners is asked to maintain would not be subject to accuracy and updating requirements, perhaps leading to inaccurate and outdated information.

The concerns of the Department of Justice are well taken, particularly in light of the recent need for information sharing among our law enforcement and investigative agencies. The recent spirit of bi-partisanship that has been fostered in this Committee by Chairman Sensenbrenner and ranking Member Conyers with respect to the recent Anti-Terrorism legislation has addressed many of these concerns and continues to drive us forward in answering the call of our law enforcement and security needs.

As we all know, this greatly needed anti-terrorism legislation was favorably reported out of this Committee last week in an historic 36-0 vote which truly transcended party lines at a time when we as a Nation most needed to come together. I truly hope that this Committee can continue to foster that same spirit of bi-partisanship. So while we must strongly consider the Justice Department's unanswered provisions in the bill before us today, we must take care to avoid tipping the delicate balance which has been struck on this important legislation.

Mr. Chairman, I offer these concerns and hope that my colleagues will contemplate their importance during today's markup. Thank you.

At this point in time, are there any amendments? The gentleman from North Carolina.

Mr. COBLE. Thank you, Mr. Chairman. You pretty well stated it. I will make a brief clarifying statement.

As you point out, I think you implied the Financial Services Committee has approved or indicated approval of this amendment, and I am told that the Democrats have also approved as well. The Subcommittee on Courts, Internet, and Intellectual Property is primarily concerned with the operation of a removal provision set forth in section 111 of the bill.

In general, section 111 clarifies that confidential supervisory information or CSI prepared or collected by banks, securities, insurance and other financial regulators as part of their supervisory responsibilities is privileged from unauthorized disclosure under H.R. 1408. As a practical matter, this means that the regulator who establishes or creates a given database is its owner, and its contents for the most part may not be disclosed by a third party absent the

regulator's consent. The section therefore contemplates the need to provide security and confidentiality in the sharing of such information.

Notwithstanding the privileged status of CSI under the bill, one provision in section 111 would allow a third party the opportunity to obtain disclosure through subpoena or discovery procedures. The jurisdictional counterpart to this option would entitle the regulator, upon motion, to remove the action to Federal court for adjudication under section 111(e)(2)(a). The removal item, Mr. Chairman, is what troubles me.

Specifically, we have identified two primary objections to section 111 in its present form. First, as drafted, section 111(e)(2)(a) would apply to a wide variety of proceedings in State court, including criminal prosecutions, civil fraud suits, and proceedings instituted by State regulators. In such proceedings, a third party might well assert that the CSI in question was relevant to a claim, even a constitutional defense. And, second, the language of section 111(e)(2)(a) would encourage unnecessary satellite litigation over what part of a given case would be brought into Federal court and what part would be allowed to remain in the State tribunal.

Mr. Chairman and fellow Members, the basic goal of section 111(e)(2)(a) is to assure that controversies over attempts to disclose CSI will be heard by a Federal court, at least when the regulator prefers the Federal forum. Another way to accomplish this objective is to authorize a declaratory judgment action in Federal court by the regulator. In fact, another provision in the legislation, section 111(k)(3), authorizes an originating financial regulator to bring a declaratory judgment action in the United States District Court for the District of Columbia to resolve disputes with a requesting financial regulator over disclosure of CSI.

As a result, the amendment simply allows a financial regulator to bring a declaratory judgment action to prevent disclosure of CSI to a third party seeking its disclosure. Mr. Chairman, this is simply a cleaner way to achieve the same purpose served by the removal provision in section 111, and I urge Members to support this, what amounts to a technical amendment.

Chairman SENSENBRENNER. Does the gentleman have an amendment at the desk?

Mr. COBLE. There is an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1408 offered by Mr. Coble.  
[The amendment follows:]

# **AMENDMENT TO H.R. 1408**

## **OFFERED BY MR. COBLE**

In section 111(e)(2), strike subparagraph (A) and insert the following:

1                   (A) DECLARATORY JUDGMENT.—If a party  
2                   seeks in any action or proceeding to compel dis-  
3                   closure of confidential supervisory information,  
4                   a financial regulator may in a civil action for a  
5                   declaratory judgment seek to prevent such dis-  
6                   closure.

Mr. COBLE. Unanimous consent to have the amendment declared as read, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes, which he has already used.

Mr. COBLE. And I used it prematurely, and I apologize to the Chair for that.

Chairman SENSENBRENNER. Further debate on the amendment? Does the gentleman from Alabama want to strike the last word at this point?

Mr. BACHUS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes. Let the Chair—

Mr. BACHUS. To address the amendment, not the bill.

Chairman SENSENBRENNER. Well, can we do it all at once, because we are—

Mr. BACHUS. I will do it all at once.

Chairman SENSENBRENNER. Let me say that the timer once again has broken down, so I would ask the indulgence of all Members not to abuse the fact that there isn't a red light shining in your face, and the gentleman from Alabama is recognized for 5 minutes.

Mr. BACHUS. Thank you, Mr. Chairman. Mr. Chairman, I will be brief. H.R. 1408 is legislation which will allow the over 250 various State financial regulators and self-regulating financial organizations to exchange information about fraudulent acts. The Marvin Frankel case alone cost consumers over \$200 million, and it is estimated that the cost of this interchange system would be about \$2 million initially and then about a half million dollars a year, so the cost is a very good bargain for the American people. And I can go

into the details of the legislation. I think most of you, the Judiciary Committee did a very good job on drawing up the issues.

This amendment replaces a removal provision which was poorly written, and this is, as Mr. Coble said—I was listening to it—a cleaner way of doing it.

Chairman SENSENBRENNER. Does the gentleman yield back his time?

Mr. BACHUS. Yes.

Chairman SENSENBRENNER. Let the Chair make another public service announcement. Chris at the clerk's desk has a stopwatch, and he will time the 5 minutes. When his hand goes up, that means time is up.

The question is on——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I am having a little trouble—I move to strike the last word——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT [continuing]. For the purpose of asking Mr. Coble a question. This doesn't seem to me to fit where the language says that it fits. If it is 111(e)(2), it is 111(e)(3) that is about declaratory judgments, I thought. Maybe I am missing something. What page is this amendment on, Mr. Coble?

Mr. COBLE. If the gentleman would yield, Mr. Watt, I am told that it is properly codified, that it bars from 111(k)(3), the staffer advises me, and furthermore says that it is drafted correctly. As to what page, Mr. Watt, hang on a minute and let me see if I can dig that up.

Mr. BACHUS. It amends section 111 of the bill.

Mr. WATT. Yes, but it seems like section 111, the declaratory judgment is in 111(e)(3) on page 48 of the bill.

Mr. COBLE. Mr. Watt, I think we are striking the removal provision, if the staffer could take that to Mr. Watt and show that to him.

Mr. WATT. On page 43 of the bill? Okay, let me ask the gentleman another question, and maybe I should address this to the Chair. I had understood that another amendment was going to be offered that did something to a section that I had raised a question about in the Banking Committee. Is there another amendment coming forward, or did I miss something?

Chairman SENSENBRENNER. If the gentleman would yield, the Chair is not aware of another amendment besides this one.

Mr. COBLE. And if the gentleman would yield, nor am I. I am not aware of another amendment either.

Mr. WATT. All right. Thank you.

Mr. BACHUS. If I could clarify, are you talking about the fingerprint provision?

Mr. WATT. No, it didn't have anything to do with fingerprints. But that is all right.

Chairman SENSENBRENNER. Does the gentleman from North Carolina yield back?

Mr. WATT. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment by the other gentleman from North Carolina, Mr. Coble. Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it.

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas seek recognition?

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Chairman, in a minute I would like to ask the gentleman from Alabama a question. I want to give him advance notice of my intent to do so.

Mr. Chairman, the intent of H.R. 1408, as I understand it, is to promote information sharing to fight financial fraud, but I must voice my opposition to the bill because, while it enhances information sharing within the financial community of regulators, it would actually restrict information sharing with law enforcement agencies.

We have just reported the Patriot Act out of this Committee with full support. That bill removes obstacles to law enforcement's receiving and sharing information. In my judgment, now is not the time to create new obstacles restricting law enforcement officials from getting information they currently may obtain.

In particular, I am concerned about section 111(b) that prohibits the disclosure to any person with three exceptions, Congress, General Accounting Office, and financial regulators, of all supervisory information. Supervisory information includes, among other things, any file, work paper, or similar information collected by the financial regulators.

We have heard from the Department of Justice, and know that they have also met with the Financial Services Committee to express their concern about this provision. And so what I would do is to hope that my friend from Alabama would consider language for a floor manager's amendment that would read, in substance, that no provision of paragraph 1 shall be construed as preventing access to supervisory information by law enforcement agencies, and this simply would make it clear that we do not intend to deny law enforcement the information they can currently obtain.

And I would like now to yield to my friend from Alabama.

Mr. BACHUS. Thank you. First of all, confidential supervisory information can be disclosed with either the permission of the relevant financial regulator, number one; or number two, if other than that information is not granted, you can subpoena the information or discover it in a court case. And those are the two ways you can do it.

Mr. SMITH. Let me reclaim my time and say if that currently can be done, I assume that there would be no objection to language that would clarify that is the intent of the legislation.

Mr. BACHUS. Well, it already, actually what this bill does is, it charges the financial regulators to just work together to develop a network to coordinate antifraud information, and that network is not a database. It simply allows computer connections, allowing the regulators to swap information on existing databases.

Mr. SMITH. Let me reclaim my time quickly—

Mr. BACHUS. It would be wise for that information to be swapped, unless both regulators agree to it. If a regulator actually said, "We are opposed to this information being disclosed," then because of adequacy or confidentiality concerns, there is a mechanism in here—

Mr. SMITH. Let me reclaim my time. While I don't want to quibble over the technicalities, I do want to make the very important point, and that is that the Department of Justice believes as the language now stands they will not be able to access the information that they can now access. I think that is a legitimate concern, a legitimate consideration, and I would hope that we could clarify the language to alleviate their, in my opinion, just considerations.

Mr. BACHUS. Yes, and I would say to the gentleman that there is an expression in one of the last sections of the bill that expresses a sense of Congress that regulators should consider sharing additional information.

Mr. SMITH. Would you be willing to have additional language to clarify that the Department of Justice can access the information they can currently access?

Mr. BACHUS. Actually, we had two competing interests in there, and that was, many Members of the Financial Services Committee felt like there was certain information which shouldn't be shared. I can't speak for the whole Committee.

I can say that what they are going to do is, they are going to sit down over the next 6 months, they are going to develop a proposal. They have 2 years to implement it. Once they have developed a proposal in 6 months, then I would say that if any of the law enforcement agencies or regulators—

Mr. SMITH. Well, let me reclaim my time. I honestly don't think we can wait 6 months to correct a problem that the Department of Justice feels that it has. And, Mr. Chairman—

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. SMITH [continuing]. Mr. Chairman, I would simply urge you to exercise whatever persuasion you can to correct this before we got to the House floor with that bill.

Mr. BACHUS. If I could ask one more minute—

Chairman SENSENBRENNER. Without objection.

Mr. BACHUS [continuing]. You know, the basic thing it doesn't allow is personally identifiable information consumers, and that we have chosen not to share.

Chairman SENSENBRENNER. For what purpose does the gentleman from Wisconsin seek recognition?

Mr. GREEN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Very briefly, I support 1408, H.R. 1408. I do, however, have one serious concern with the bill.

As Members of the Committee know, each State has its own regulatory authority for the insurance industry. These offices are established and funded entirely under State laws and State constitutions. In short, they are purely an agency of State government.

Section 117 of H.R. 1408 would give the GAO, a Federal agency, complete authority to audit State insurance records. I think all

Members would agree that giving a Federal agency such direct power over a State government agency raises some serious States' rights and sovereignty issues. While I understand the need for cooperation between the GAO and State insurance regulators, I don't believe this justifies giving the GAO the unfettered ability to subpoena or otherwise compel a State government agency to cooperate with an audit.

Unfortunately, this issue was not raised until after the Financial Services Committee completed consideration of this bill. I understand that Chairman Sensenbrenner has examined this issue and determined it to be outside the jurisdiction of the Judiciary Committee, so we cannot reexamine the issue today. I just hope that as the bill moves to the floor, we can revisit section 117 and make appropriate changes.

As a Member of both the Financial Services and Judiciary Committees, I would be happy to work with the Chairman and his staff to accomplish this. With that—

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. GREEN. I yield.

Chairman SENSENBRENNER. The gentleman is correct on both points, first on the merits, and secondly, section 117 is specifically outside the sequential referral that the Judiciary Committee received, and thus any amendments to section 117 the Chair would feel constrained to rule out of order.

Mr. GREEN. That is right, and so I won't be offering an amendment. I would just seek to work with the Chairman as we move to the floor.

With that, I yield my time back.

Chairman SENSENBRENNER. The gentleman's time has expired. Are there further amendments?

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments? The gentleman from Texas, do you have an amendment?

Mr. SMITH. Mr. Chairman, I would like to engage the gentleman from Alabama in a colloquy, very briefly.

Chairman SENSENBRENNER. You already have been recognized once, and so has the gentleman from Alabama.

Mr. GEKAS. I seek recognition and would yield.

Chairman SENSENBRENNER. The gentleman from Pennsylvania moves to strike the last word, and yields to the gentleman from Texas.

Mr. SMITH. I thank the gentleman from Pennsylvania for yielding. Let me yield to the gentleman from Alabama, and see if the amendment that I just showed him would be acceptable to him, and if so, I would like to offer it.

Mr. BACHUS. Mr. Chairman, it seems innocuous enough, but let me say this. Without passing it by staff, I am not in a position to accept it.

I am in a position to do this. I am in a position to consult Members on both sides of the aisle and, as this goes to the floor, to offer it on the floor.

Mr. SMITH. I thank the gentleman for mentioning that, and I will look forward to working with him, and hopefully we can offer that together on the House floor. And I thank the gentleman from Pennsylvania for yielding.



Mr. GEKAS. I yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from Texas wish to offer the amendment?

Mr. SMITH. Mr. Chairman, I am not going to offer the amendment now, in the expectation that Mr. Bachus and I will offer the amendment on the House floor.

Chairman SENSENBRENNER. The time of the gentleman from Pennsylvania is yielded back. Are there further amendments? For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

In light of the events of past weeks and other issues, this bill obviously is a very important bill that adds to the sharing of information and also the elimination, or at least the working toward the elimination of fraud in the financial services industry.

I would like to yield to Mr. Bachus, I guess our resident expert on this, for a question as it relates to any privacy elements in this bill that do not conflict or would not conflict with the intent of the bill to eliminate fraud. Are there any provisions that give us comfort that the respective agencies cannot go too far with the information? I yield to the gentleman from Alabama.

Mr. BACHUS. In fact, a great deal of the bill has confidentiality and privacy protections and safeguards in the bill, and I would say the bulk of the bill actually has these safeguards in sharing of information.

Ms. JACKSON LEE. We can be sure, then, with the ultimate and potential passage of this bill that we have not eliminated—and I reclaim my time—have not eliminated those concerns regarding policy, which of course in this Committee and I know in the Financial Services Committee the privacy issues have been vigorously discussed and debated. Is that correct? I yield to the gentleman.

Mr. BACHUS. Yes, and the information that is shared is final disciplinary actions or formal adjudications by the bodies, not rumors or simply statements as to what somebody said during an investigation. These are actually formal findings of the different regulatory bodies.

Ms. JACKSON LEE. Reclaiming my time, let me thank the gentleman for that. Being a member of the bar, there are procedures where information regarding disciplinary actions on lawyers are shared. Knowing the impact that fraudulent securities professionals can have on the elderly and the less informed, I think it is important to have the privacy protections but also to have this reporting feature to eliminate such, if you will, bad practices in the industry.

And I thank the gentleman. I yield back my time, Mr. Chairman.

Chairman SENSENBRENNER. Are there further amendments?

Hearing none, the Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill, H.R. 1408, favorably, as amended. All in favor, say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted. Without objection, the bill will be reported favorably to the House in form of a single amendment in the

nature of a substitute, incorporating the amendment adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental, or minority views.

[Intervening business.]

And the Committee stands adjourned.

[Whereupon, at 5:12 p.m., the Committee was adjourned.]

#### ADDITIONAL VIEWS

We support the bill as passed by the Committee on the Judiciary and would oppose an attempt to carve out of the financial regulator supervisory privilege an exemption for law enforcement, as was proposed at the markup by Representative Smith. Such an exemption is both unnecessary and unwise.

A law enforcement exemption is unnecessary because H.R. 1408 does not in any way restrict the ability of law enforcement agencies to obtain the books and records of a financial institution, such as a bank, broker-dealer, or insurance company. Under the bill, law enforcement agencies could still obtain—directly from a financial institution—customer account and other records of an institution to the extent provided by existing law. Nothing in H.R. 1408 impairs that process.

It would also be unwise to grant a law enforcement exemption to the financial regulator supervisory privilege because it would undermine the privacy of individuals' financial records. The bill clarifies that law enforcement agencies should work directly with the appropriate financial regulator—primarily the Federal banking agencies and Securities and Exchange Commission—if law enforcement seeks to obtain the confidential reports of examination prepared by the financial regulator. This process encourages cooperation between law enforcement and the financial regulators.

Equally important, such a process ensures that law enforcement officials obtain information that is relevant to their inquiry, but not extraneous information about persons or entities that are not the target of the law enforcement investigation. If law enforcement agencies are exempted from the financial regulator supervisory privilege, it could potentially result in confidential information unrelated to the investigation becoming public. The current practice, whereby law enforcement agencies obtain financial regulatory reports from the regulatory body (as opposed to the regulated entity), is the best way to provide law enforcement with relevant information without compromising the privacy of those who are not the focus of the investigation.

For these reasons, we would oppose any attempt to create a law enforcement exemption to the financial regulator supervisory privilege.

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